Supreme Court, U. S.
FILED
OCT 23 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners, Village of Arlington Heights, et al.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

INDEX.

PAGE

Opinions Below 2

Jurisdiction 2

Questions Presented for Review 3

Constitutional Provisions and Statutes Involved 3

Statement of the Case 4

Reasons Relied on for Allowance of the Writ 8

I. The Decision Is in Conflict with This Court's Repeated Holdings That Housing and Zoning Are Not Subject to the "Compelling Interest" Test. It Strikes Down an Admittedly Valid Legislative Act Simply Because the Possible Impact Falls Upon a Lower Income Group Which Could Have a Higher Percentage of Blacks Than Whites ... 9

II. The Plaintiffs Failed to Overcome the Presumption of Validity Attaching to the Zoning Ordinance. The Legislative Judgment Was Clearly Reasonable and the Court of Appeals Erred in Substituting Its Judgment for That of the Municipal Legislative Body 19

III. The Plaintiffs Lack Standing to Bring This Action 24

Conclusion 27

Appendix A

Seventh Circuit Opinion (June 10, 1975) A1

Appendix B

U. S. District Court Opinion (February 22, 1974) B1

Appendix C

Order Denying Petition for Rehearing (August 13, 1975) C1

Appendix D
Constitutional Provisions and Statutes Involved D1

Appendix E
Defendant's Exhibit 1
Existing Land Use and Zoning E1

Appendix F
Defendants' Exhibits 2 and 14
Photographs of Development of Surrounding Area F1

TABLE OF AUTHORITIES.

Cases.

Acevedo v. Nassau County, 500 F.2d 1078 (2d Cir. 1974) 11, 17

Bennett v. Chicago, 24 Ill.2d 270 (1962) 22

Berman v. Parker, 348 U.S. 26 (1954), 99 L.Ed. 27 20

Citizens Committee for Faraday Wood v. Lindsay, 362 F. Supp. 651 (S.D. N. Y. 1973) 11, 18

Clark v. Universal Builders, Inc., 401 F.2d 324 (7th Cir. 1974) (distinguished) 14

Clark Oil & Refining Corp. v. Evanston, 23 Ill.2d 48 (1961) 25

Construction Industry Association of Sonoma County v. City of Petaluma, No. 74-2100 (9th Cir. August 13, 1975) 16, 17, 18

Davis v. Cities Service Oil Co., 420 F.2d 1278 (10th Cir. 1970) 12

English v. Town of Huntington, 448 F.2d 319 (2d Cir. 1971) 15, 18

Euclid v. Ambler Realty Co., 272 U.S. 365 (1926), 71 L.Ed. 303 .....19, 20, 21, 23, 27

Exchange National Bank v. County of Cook, 25 Ill.2d 434 (1962) 22

James v. Valtierra, 402 U.S. 137 (1971), 28 L.Ed.2d 678 .....11, 13, 15, 18, 19

LaSalle National Bank v. City of Evanston, 57 Ill.2d 415 (1974) 22, 23

Lawrence v. Oakes, 361 F.Supp. 432 (D. Vt. 1973) 11, 14

Lindsey v. Normet, 405 U.S. 56 (1972), 31 L.Ed.2d 36 .....11, 13, 18

Mahaley v. Cuyahoga Metropolitan Housing Authority, 500 F.2d 1087 (6th Cir. 1974) 11, 17

Milliken v. Bradley, 418 U.S. 717 (1974), 41 L.Ed.2d 1069 15

Northcross v. Board of Education of Memphis, 397 U.S. 232 (1970), 25 L.Ed.2d 246 12

Palmer v. Thompson, 403 U.S. 217 (1971), 20 L.Ed.2d 438 .....11, 15, 17, 18, 27

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973), 36 L.Ed.2d 16 ....11, 13, 14, 16, 18, 27

Selover, Bates & Co. v. Walsh, 226 U.S. 112 (1912), 57 L.Ed. 146 26

Sutter v. Village of Mundelein, 27 Ill.2d 589 (1963).... 22

Trendel v. County of Cook, 27 Ill.2d 155 (1963) 22

United States v. 79.95 Acres of Land, 459 F.2d 185 (10th Cir. 1972) 12

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974), 39 L.Ed.2d 797 .....11, 12, 13, 18, 19, 20, 21, 23, 27

Warth v. Seldin, ... U.S. ....., 45 L.Ed.2d 343 (June 25, 1975) 18, 25, 26, 27

Western Turf Assn. v. Hyman Greenberg, 204 U.S. 359 (1907), 51 L.Ed. 520 26

Wheeling Steel Corp. v. Glander, 337 U.S. 562 (1949) .. 26

Ybarra v. City of Town of Los Altos, 503 F.2d 250 (9th Cir. 1974) 15, 16, 18

Constitutional Provision and Statutes.

United States Constitution
Amendment XIV 3, D1

Civil Rights Act of 1866
42 U.S.C.A. §§ 1981-1982 .....3, D1

Civil Rights Act of 1871
42 U.S.C.A. § 1983 .....3, D1

Fair Housing Act of 1968
42 U.S.C.A. §§ 3601, *et seq.* 3, D2, D3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The Village of Arlington Heights, an Illinois municipal corporation, petitions for writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit, decided June 10, 1975.

OPINIONS BELOW.

The Seventh Circuit's decision reversing the District Court is reported in 517 F. 2d 409 and is reprinted in full as Appendix A to this petition. The District Court's decision is reported at 373 F. Supp. 208 and is reprinted in full as Appendix B to this petition.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 10, 1975. The order en banc denying the petition for rehearing was entered on August 13, 1975, with the majority of the active members of the Court having voted to deny a hearing en banc and three judges voting that the petition be granted. A copy of the order of August 13, 1975 is reprinted as Appendix C to this petition. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1254. This petition for writ of certiorari has been filed in accordance with 28 U. S. C. § 2101.

QUESTIONS PRESENTED FOR REVIEW.

1. Does the failure to grant a rezoning request for multiple-family housing for low- and moderate-income families in the midst of a single-family area violate the Fourteenth Amendment, even though the Village was admittedly maintaining the integrity of its zoning plan and protecting neighboring property values?

2. Does an alleged discriminatory housing pattern in the Chicago metropolitan area impose upon a suburban municipality an affirmative duty to ignore its admittedly proper zoning ordinance in order to permit the construction of multi-family low- and moderate-income housing?

3. Is housing a fundamental constitutional right which requires the application of the "compelling interest" test?

4. Did the plaintiffs overcome the presumption of validity attaching to the zoning ordinance of the Village of Arlington Heights?

5. Did the plaintiffs have sufficient standing to litigate the merits of the zoning ordinance?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED.

This case involves the Fourteenth Amendment of the Constitution of the United States; 42 U. S. C. A. §§ 1981-1982, the Civil Rights Act of 1866; 42 U. S. C. A. § 1983, the Civil Rights Act of 1871; 42 U. S. C. A. §§ 3601, et seq., the Fair Housing Act of 1968. The relevant provisions are set forth in Appendix D to this petition.

STATEMENT OF THE CASE.

(References Are to Appendices)

The plaintiff, Metropolitan Housing Development Corporation, is a not-for-profit corporation organized for the purpose of developing low- and moderate-income housing in the Chicago metropolitan area. It has a 99-year lease and sale agreement with the owners of the subject property which is a vacant 15-acre tract in the southeast corner of an 80-acre parcel owned by the Clerics of St. Viator who maintain a high school and novitiate on a portion of the larger tract in the Defendant Village of Arlington Heights. The contract and lease were subject to rezoning for multi-family purposes and the securing of a Section 236 financing commitment.

The property is zoned for R-3 One-Family Dwelling District under the Zoning Ordinance of the defendant Village, and has been zoned for single-family use since the first Village Zoning Ordinance. Under the Comprehensive Plan of 1959, the property was designated for single-family use.

Under the R-3 classification the property can be developed for single-family detached dwellings at a density of 8,750 square feet of lot area per dwelling. Approximately 50 single-family units can be placed upon the subject property.

The purchase price of the subject property is $300,000. The plaintiffs propose to use the land for 190 townhouses which were to be financed pursuant to Section 236 of the National Housing and Urban Development Act of 1968.

All the land surrounding the subject property is zoned and developed for R-3 single-family use. A map showing the existing land use and zoning and photographs of the development of the surrounding area which were received in evidence appear as Appendices E and F to this petition.

The plaintiff applied for a zoning change to the R-5 multiple-family classification. After public hearings, the Plan Commission recommended against the rezoning, and the Board of Trustees of the Village voted six to one to deny the request.

Suit was then instituted by the plaintiff, corporation, and certain individual plaintiffs seeking to represent moderate income minority persons who claimed to seek housing in Arlington Heights. A Mexican-American resident of Arlington Heights and a local community organization intervened. Federal jurisdiction was invoked by the plaintiffs' claim of a violation of the Fourteenth Amendment, Sections 1981, 1982 and 1983 of the Civil Rights Act, and the Fair Housing Act of 1968, 42 U. S. C. §§ 1981, 1982 and 1983, and §§ 3601, et seq.

The plaintiffs' evidence showed that 14 other sites in Arlington Heights were examined; 9 of them were rejected because they were too far removed from public facilities or were surrounded by single-family homes; 6 other sites were rejected because they were too expensive. The corporate plaintiff had previously developed a 212-unit low- and moderate-income multiple-family project in an unincorporated area three-fourths of a mile outside the corporate limits of the Village.

The 1970 population of the Village of Arlington Heights was 64,800. Based on 1970 census data, the plaintiffs' evidence showed that 3,244 Blacks could afford to live in Arlington Heights. The plaintiffs had not made a survey of housing preferences of Blacks employed in Arlington Heights and had not made an investigation of the number of Blacks or Spanish-speaking persons in Arlington Heights in 1971 at the time of the local hearing.

In August of 1973, there were 14,444 owner-occupied, single-family homes and 6,085 multiple-family units in Arlington Heights. At the time of the MHDC zoning hearing, there was land zoned but not developed for a total of 9,073 multiple-family dwelling units. The vacancy rate for apartments in

Arlington Heights according to the 1970 census was 11.5%. At the time of the MHDC hearing before the Plan Commission, at least seven parcels which were zoned for R-5 multiple purposes were for sale.

The defendants' evidence established the single-family character of the area in question, and the consistent Village policy of using the R-5 classification as a buffer between single-family uses and commercial or industrial uses. The subject property would not constitute such a buffer.

The defendants' expert testimony indicated that the proposed development would have an adverse effect on adjacent property owners and would have a detrimental effect on the value of single-family homes in the area. The defendants also introduced evidence showing that the subject property could be economically developed for single-family homes at a price range comparable or higher than the existing single-family homes in the area.

The trial court held that the evidence established that the Village Trustees were motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan. It further found that low-income workers do not have a constitutional right to low-rental housing either where they work or elsewhere. The trial court found that there was no evidence proving discrimination against racial minorities as distinguished from underprivileged persons generally, and that the decision was not an arbitrary or capricious act in violation of the Fourteenth Amendment. (B5, B7)

The Court of Appeals in reviewing evidence of other requested zoning changes in the Village found that the evidence did not necessitate a finding that the Village was administering its buffer zone policy in a discriminatory manner. (A5) It also concluded that the District Court's finding that the defendants were concerned with the integrity of the Village's zoning plan was not clearly erroneous. (A5) The Court of Appeals recognized that merely because racial minorities constituted a higher percentage of the low- and moderate-income category, this disparity did not necessarily mean that the zoning change refusal had the type of racially discriminatory effect that required the invocation of the compelling interest test. (A6)

The Court of Appeals however noted that historically the Chicago metropolitan area has been segregated and that in 1970 there were only 27 Black residents in Arlington Heights, and that in the four-township northwest Cook County area of which Arlington Heights is a part there was a population increase from 1960 to 1970 of 219,000 people, but only 170 of these were Black. The Court held that under the facts of the case, the Village's rejection of the Lincoln Green Project had racially discriminatory effects. It applied the compelling public interest test and concluded that the planning rationale behind the buffer zone policy and the fact that neighboring property might be diminished in value could not meet the compelling interest test. It concluded that since no compelling justification for the decision existed, the refusal to rezone was a violation of the Equal Protection Clause of the Fourteenth Amendment.

Chief Judge Fairchild dissented, noting that at the time of the Village's decision to deny the variance, there were at least 9 undeveloped tracts of land in excess of 15 acres zoned for R-5 multiple-family use, and that the record did not contain a sufficient showing that it was not reasonably possible to construct the proposed project on one of these sites.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The writ should be granted in this case because the decision of the Court of Appeals in reversing the trial court is clearly in conflict with the applicable decisions of this Court and establishes a novel view of the Fourteenth Amendment which threatens the validity of zoning ordinances not only in the Chicago metropolitan area, but throughout the nation. The explicit conclusion of the majority of the Court of Appeals is that a refusal to rezone property, which is clearly suitable for single-family purposes in the midst of a single-family area, constitutes a violation of the Fourteenth Amendment simply because there is a possibility that a larger percentage of Black residents may occupy the proposed multiple-family development than if the area were developed for single-family purposes. The majority's opinion holds for the first time that zoning principles must give way to racial considerations, while admitting that the zoning itself is proper by all conventional zoning standards, and that the trial court's finding that the defendants were concerned with the integrity of the Village Zoning Ordinance was not erroneous.

Moreover, the opinion applies the "compelling interest" test to a zoning controversy, notwithstanding the fact that this Court has specifically refused to apply that test in comparable factual situations.

The opinion now imposes for the first time a duty on a municipality to disregard its Comprehensive Plan and its Zoning Ordinance, which were admittedly not discriminatory in any manner, and to take affirmative steps to zone for racial integration because of segregation in the metropolitan area generally. The opinion is one of great consequence which demands the scrutiny of this Court.

I.

THE DECISION IS IN CONFLICT WITH THIS COURT'S REPEATED HOLDINGS THAT HOUSING AND ZONING ARE NOT SUBJECT TO THE "COMPELLING INTEREST" TEST. IT STRIKES DOWN AN ADMITTEDLY VALID LEGISLATIVE ACT SIMPLY BECAUSE THE POSSIBLE IMPACT FALLS UPON A LOWER INCOME GROUP WHICH COULD HAVE A HIGHER PERCENTAGE OF BLACKS THAN WHITES.

The Court of Appeals' opinion in this case breaks new ground. The majority of the Court in reversing the trial court conceded that the findings of the trial court with respect to the lack of discriminatory intent or application of the Arlington Heights Zoning Ordinance were correct. Nevertheless, the Court applied the "compelling interest" test to invalidate a local zoning ordinance simply because the economics of the marketplace dictated that a lower income group might otherwise be barred from the use of the subject property and that lower income group might contain a higher percentage of Blacks than would be the case for a use permitted under the ordinance. It should be noted that the importance of this case is such that three of the eight Circuit Judges voted in favor of granting a rehearing.

The need for this Court to settle the question raised by the Court of Appeals' opinion is obvious. If the opinion is allowed to stand, no zoning ordinance in the United States will be sustained in the face of an argument that a higher percentage of a minority group or poor people generally could occupy an area if the zoning was downgraded.

It should be noted in the first instance that the trial judge in this case made specific findings in his opinion which were not disputed by the Court of Appeals. The trial judge found that the plaintiffs failed to carry their burden of proving discrimination by the defendants as to racial minorities as distinguished from the underprivileged generally. There is no doubt that as

the trial judge found, housing for low earners is scarcer in Arlington Heights than in some other communities. But, as the trial court pointed out, this affects the entire low-income group, not merely Blacks. It is clear that the Fourteenth Amendment and the Civil Rights Act prohibit discrimination against Blacks and minorities, but they do not afford rights to poor people as such.

The record is also clear that Blacks and other minorities do live in Arlington Heights and that at the time of the original decision by the Village Board, there was an 11% vacancy rate for rental units in the Village. The individual intervenor-plaintiff, Eluteria D. Maldonado, is in fact a Mexican American who already resides in the Village. The Court of Appeals notes in passing that Blacks could occupy 5% of the housing in Arlington Heights based upon the cost of presently available housing of all types.

The Court however ignored the testimony of the plaintiffs' own witness, deVise, that 2,500 Blacks whose income would qualify for Lincoln Green, the proposed project, were also qualified for other housing in the Village of Arlington Heights which was in existence in 1970. deVise testified that 3,244 Blacks could afford to live in Arlington Heights based upon the housing supply in existence in 1970. Moreover, in his computations, he considered only people moving from house to house or apartment to apartment, not the possibility of Blacks moving from existing apartments in other communities to houses in Arlington Heights or Blacks moving from houses in other communities to apartments in Arlington Heights. We submit that this evidence clearly indicates that it has not been the zoning pattern of the Village which has kept Blacks from moving into the community.

We suggest that the finding of the trial judge that there was insufficient evidence to show discrimination by the defendants against racial minorities is dispositive of the whole controversy. The Court of Appeals in its opinion specifically found that the Village zoning policy was not administered in a discriminatory

manner and supported the District Court's finding that the Village was concerned with the integrity of the zoning plan. The trial court stated the basic issue was whether low-income workers have a constitutional right to low-rental housing, either where they work or elsewhere, and concluded that there is no such rule of law. The trial court's conclusion in this respect is of course well supported by the decisions of this Court and other Federal Courts throughout the country. *Village of Belle Terre* v. *Boraas*, 416 U. S. 1, 39 L. Ed. 2d 797; *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1, 36 L. Ed. 2d 16; *Lindsey* v. *Normet*, 405 U. S. 56, 31 L. Ed. 2d 36; *James* v. *Valtierra*, 402 U. S. 137, 28 L. Ed. 2d 678; *Palmer* v. *Thompson*, 403 U. S. 217, 29 L. Ed. 2d 438; *Acevedo* v. *Nassau County*, 500 F. 2d 1078; *Mahaley* v. *Cuyahoga Metropolitan Housing*, 500 F. 2d 1087; *Citizens Committee for Faraday Wood* v. *Lindsay*, 362 F. Supp. 651; *Lawrence* v. *Oakes*, 361 F. Supp. 432.

The Court of Appeals in reversing the trial court does not deal with that proposition, nor does it cite any authority which would give special privileges with respect to housing and zoning to low-income persons, regardless of race. It is implicit in its opinion however that low-income persons apparently do have such special privileges if there is a possibility that there will be a higher percentage of racial minorities in their number.

The trial court found, and the Court of Appeals recognized, that the Village's Comprehensive Plan had been generally systematically followed. The trial court found that the evidence indicated a serious damaging of the value of surrounding single-family homes, and the trial court concluded that the weight of the evidence proves that the defendants were motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan. The trial court concluded that this was not an arbitrary or capricious act in derogation of the plaintiffs' Fourteenth Amendment rights. These findings were supported by the evidence and should not be disturbed.

Northcross v. *Board of Education of Memphis,* 397 U. S. 232, 25 L. Ed. 2d 246; *United States* v. *79.95 Acres of Land,* 459 F. 2d 185, 187; *Davis* v. *Cities Service Oil Co.,* 420 F. 2d 1278, 1279.

The Court of Appeals nevertheless substituted its judgment for that of the trial court with respect to the facts. As this Court pointed out in the *Northcross* case, where, as here, the findings of the District Court were supported by substantial evidence, the Court of Appeals erred in substituting its own findings.

In reversing the findings of the trial court, the Court of Appeals offered no legal support for the proposition that a zoning ordinance, which is otherwise legitimate and well within the legislative discretion of the municipal body, is invalid because the result might be the exclusion of low-income persons, who in turn *might* be Black. The logic of this position would dictate that there can no longer be any single-family zoning district in any municipality if a developer seeks to build housing which he can show might be occupied by a greater percentage of a minority group than presently existed in that municipality. There is no basis in the Fourteenth Amendment or in any decision of this Court or any other court cited to support such a conclusion.

The Court of Appeals has failed to recognize the basic decisions of this Court in dealing with the questions at issue here. It has chosen to impose the "compelling interest" test to a legislative decision, which is clearly well within the range of legislative discretion. In its opinion the Court of Appeals totally ignores the basic holdings of this Court in a series of cases in which it has refused to classify housing as a fundamental right and has refused to apply the "compelling interest" test.

Most recently in the case of *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 39 L. Ed. 2d 797, the Court pointed out in a zoning case that limiting occupancy under a zoning ordinance involved no fundamental right guaranteed by the Constitution. The Court went on to say:

> "We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 64 L.Ed. 989, 40 S.Ct. 560) and bears 'a rational relationship to a [permissible] state objective.' Reed v. Reed, 404 U.S. 71, 76."

Here, the protection of surrounding properties from depreciation and the preservation of the zoning ordinance are clearly permissible objectives.

In *Lindsey* v. *Normet,* 405 U. S. 56, 31 L. Ed. 2d 36, the Court held that social importance was not the critical determinate for subjecting legislation to strict scrutiny. The Court recognized the importance of decent, safe and sanitary housing, but it went on to point out that there was no constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy any particular dwellings. The Court concluded that, absent constitutional mandate, the assurance of adequate housing is a legislative not a judicial function. 405 U. S. 56, 74.

This Court in *James* v. *Valtierra,* 402 U. S. 137, 28 L. Ed. 2d 678, held that a legal requirement may have a greater impact upon the poor or other minority, but that does not render the requirement invalid under the Fourteenth Amendment.

To the same effect was this Court's decision in *San Antonio Independence School District* v. *Rodriguez,* 411 U. S. 1, 36 L. Ed. 2d 16, where the Court specifically held that there was no fundamental right to housing guaranteed by the Constitution. It cited *Lindsey* in pointing out that there was no constitutional mandate to assure adequate housing. The Court at 411 U. S. 1, 43, said:

> "As in the case of housing, the central importance of welfare benefits to the poor was not an adequate foundation for requiring the State to justify its law by showing some

> compelling state interest. See also, Jefferson v. Hackney, 406 U.S. 535, 32 L.Ed.2d 285, 92 S.Ct. 1724 (1972); Richardsen v. Belcher, 404 U.S. 78, 30 L.Ed.2d 231, 92 S.Ct. 254 (1971)."

In the *Rodriguez* case, the Court moreover rejected the concept that housing involved a suspect class.

These decisions are well summarized in the case of *Lawrence* v. *Oakes*, 361 F. Supp. 432, decided by a three judge panel in the District Court of Vermont. The Court there pointed out that, under the decisions of the United States Supreme Court, the compelling interest test is not to be applied in cases similar to that at bar. At page 440, the Court said:

> "At the outset, we reject plaintiff's argument that we should adopt the compelling interest test, a test that has been invoked by the Supreme Court only in cases in which the challenged provision impinged on a 'fundamental right,' or in which the class involved was a suspect class."

It is clear, therefore, that under the decisions of this Court, the right to housing although socially of great significance, does not involve a fundamental constitutional right, and the Court of Appeals' application of the "compelling interest" test is inappropriate and erroneous.

That Court's further reliance upon its own decision in the case of *Clark* v. *Universal Builders, Inc.*, 401 F. 2d 324, is also misplaced. The *Clark* case was decided on the question of the propriety of granting a directed verdict for the defendants at close of plaintiffs case. Moreover, that case involved not municipal action pursuant to an undoubted grant of police power, but involved actions by private parties taking advantage of a dual market in real estate with respect to price. The Court held that, when allegations were made which set up a prima facie case of two prices dependent upon race for housing in the same market, there was a violation of the Civil Rights Act. No such factual situation exists here. There is no evidence to indicate that blacks

do not have equal access to housing in Arlington Heights at the same price as do whites.

The fact that more blacks than whites might be affected by refusing to rezone does not render the zoning violative of the Fourteenth Amendment. In *Palmer* v. *Thompson*, 403 U. S. 217, 29 L. Ed. 2d 438, this Court held that the closing of all public swimming pools by a municipal authority was not unconstitutional, notwithstanding the fact that Negroes would be affected to a greater extent than whites. The Court concluded with respect to the record that "it shows no state action affecting blacks differently from whites." Here, of course, the fact that the plaintiffs argued that the Village's action would have a disproportionate effect on blacks does not render a legitimate zoning decision a violation of the Fourteenth Amendment.

In the recent case of *Milliken* v. *Bradley*, 418 U. S. 717 (1974), 41 L. Ed. 2d 1069, this Court in a school segregation case held that racial imbalance in itself is not to be equated with a constitutional violation calling for a remedy. It indicated that the fact that Detroit schools were segregated did not require an inter-district plan outside the corporate limits, absent any showing that the suburban school district had in fact discriminated. Thus, the fact that Arlington Heights is located in the Chicago metropolitan area, which the Court of Appeals described as segregated, does not impose an affirmative duty upon the Village of Arlington Heights to change its otherwise valid Zoning Ordinance, absent a showing of discrimination by Arlington Heights in the administration of an ordinance clearly valid on its face. *Milliken* v. *Bradley*, 418 U. S. 717, 41 L. Ed. 2d 1069, 1091.

The fact that enforcement of municipal ordinances might have a greater impact on the poor of course does not render the ordinance invalid under the Equal Protection Clause. *James* v. *Valtierra*, 402 U. S. 137, 28 L. Ed. 2d 678; *English* v. *Town of Huntington*, 448 F. 2d 319, 324; *Ybarra* v. *City of Town of Los Altos*, 503 F. 2d 250 (1974).

The decision of the Court of Appeals here is inconsistent with the holdings of several other circuits. In *Ybarra* the Court of Appeals for the Ninth Circuit refused to apply the "compelling interest" test in a case challenging a large lot zoning ordinance on the grounds it excluded Mexican Americans. The trial court had found that the ordinance prevented poor people from living in Los Altos and that if Mexican Americans did not live there, it was because of poverty. The Court at page 253 said: "We agree that discrimination against the poor does not become discrimination against an ethnic minority merely because there is a statistical correlation between poverty and ethnic background." The Court based its decision on this Court's opinion in *Rodriguez.*

In the very recent case of *Construction Industry Association of Sonoma County* v. *City of Petaluma,* No. 74-2100, decided August 13, 1975 by the Court of Appeals for the Ninth Circuit, that Court reversed the trial court and rejected the concept that an allegedly exclusionary zoning ordinance was a violation of the Fourteenth Amendment. At page 11 of the slip opinion, the Court said:

> In attacking the validity of the Plan, appellees rely heavily on the district court's finding that the express purpose and the actual effect of the Plan is to exclude substantial numbers of people who would otherwise elect to move to the City. 375 F. Supp. at 581. The existence of an exclusionary purpose and effect reflects, however, only *one* side of the zoning regulation. Practically all zoning restrictions have as a purpose and effect the *exclusion* of some activity or type of structure or a certain density of inhabitants. And in reviewing the reasonableness of a zoning ordinance, our inquiry does not terminate with a finding that it is for an exclusionary purpose.[11] We must determine further whether the *exclusion* bears any rational relationship to a *legitimate state interest.* If it does not, then the zoning regulation is invalid. If, on the other hand, a legitimate state interest is furthered by the zoning regulation, we must defer to the legislative act. Being neither a super legislature nor a zoning board of appeal, a federal court is without authority to weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulation.

In the case of *Acevedo* v. *Nassau County,* 500 F. 2d 1078 (1974), the Second Circuit was considering the liability of Nassau County, New York, for abandoning plans for constructing low-income family housing. At page 1080, the Court noted:

> "Appellees have no constitutional or statutory duty to provide low income housing. There is no 'constitutional guarantee of access to dwellings of a particular quality.' Lindsay v. Normet, 405 U.S. 56, 74 (1972)."

The Court went on to say at page 1082:

> "The Fair Housing Act does not impose any duty upon a governmental body to construct or to 'plan for, approve and promote' any housing."

In the case of *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087 (1974), the Sixth Circuit Court of Appeals held that the failure of Cleveland suburbs to enter into a cooperation agreement for the construction of federally assisted housing did not violate federal civil rights laws or the United States Constitution. The Court relied heavily on *Palmer* v. *Thompson,* 403 U. S. 217. At page 1093, it said:

> In the present case the failure of the suburbs to provide low-rent housing affected alike both low-income blacks and whites. There may have been a greater impact on the blacks, but that, under Palmer, is not sufficient to establish a constitutional violation.
>
> In Lindsey v. Nomet, 405 U.S. 56 (1972), the Court held that no one has a constitutional right to adequate housing. Since a person has no right to public housing in his own city, it follows that he has no such right in a municipality in which he does not reside.
>
> See also Ranjel v. City of Lansing, 417 F.2d 321 (6th Cir. 1969), cert. denied, 397 U.S. 980, rehearing denied, 397 U.S. 1059 (1970), on neutral action of referendum.

The Court also cited *Citizens Comm. for Faraday Wood* v. *Lindsay*, 362 F. Supp. 651 (S. D. N. Y. 1973) and its reliance on *Palmer* and *Valtierra*.

In the case of *Warth* v. *Seldin*, ... U. S. ..... 45 L. Ed. 2d 343, decided June 25, 1975, this Court denied standing of certain petitioners to attack a zoning ordinance which they contended was exclusionary. The Court however recognized that it could be economics rather than discriminatory zoning which denied access to housing in the municipality in question. The Court noted at page 359:

> "Indeed, petitioners' descriptions of their individual financial situations and housing needs suggest precisely the contrary—that their inability to reside in Penfield is the consequences of the economics of the area housing market, rather than of respondents' assertedly illegal acts."

It must be concluded that, as this Court has repeatedly pointed out, access to housing does not involve a fundamental constitutional right which requires the application of the "compelling interest" test in determining the validity of a zoning ordinance which would allegedly limit access to housing by minority groups because statistically they have a greater percentage than the majority group in the low-income class. The Court of Appeals' conclusion in this regard is manifestly erroneous in light of the repeated holdings of this Court in *Belle Terre, Rodriguez, Lindsey, Palmer, James,* and *Warth,* and Court of Appeals' decisions in *English, Ybarra,* and *City of Petaluma.* The Court's opinion thus is a patent departure from the decisions of this Court of other Courts of Appeal throughout the country and should not be allowed to stand.

II.

THE PLAINTIFFS FAILED TO OVERCOME THE PRESUMPTION OF VALIDITY ATTACHING TO THE ZONING ORDINANCE. THE LEGISLATIVE JUDGMENT WAS CLEARLY REASONABLE AND THE COURT OF APPEALS ERRED IN SUBSTITUTING ITS JUDGMENT FOR THAT OF THE MUNICIPAL LEGISLATIVE BODY.

The Court of Appeals conceded in its opinion that the trial court was not erroneous in concluding that the defendants were concerned with the integrity of the Village's zoning plan. It also concedes that decisions that affect those in the lower income bracket more than others are not thereby rendered racially discriminatory. The Court recognizes that this Court is *James* v. *Valtierra,* 402 U. S. 137, has held that racial disparity alone does not amount to racial discrimination. The Court however, as we have indicated above, chooses wrongfully to apply the "compelling interest" test to declare an otherwise valid zoning restriction to be repugnant to the Fourteenth Amendment.

Nowhere in its opinion does the Court of Appeals suggest that the Village exercised its zoning powers with respect to the land in question in a discriminatory manner. Its opinion totally ignores the basic rules that this Court has laid down in the consideration of zoning questions. The Court nowhere cites or attempts to distinguish the controlling cases of *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 39 L. Ed. 2d 797, and *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. Ed. 303, cited below by the defendants. These two cases are clearly dispositive of the zoning questions presented.

This case should be nothing more than a garden-variety zoning controversy. Although the plaintiffs have introduced the issue of racial discrimination and the Court of Appeals decided the issue on Fourteenth Amendment grounds, it is obvious that the only real question is the reasonableness of the zoning restriction, which both on its face and in fact is not aimed at any racial

minority. The record is absolutely clear that, based upon sound zoning principles, the retention of a single-family classification on the subject property, which is surrounded by single-family homes and a school development, is a legitimate and valid exercise of the legislative discretion vested in the local authorities.

The law is well established that a zoning ordinance is presumptively valid, and the party assailing its validity must show by clear and convincing evidence that it is invalid. This fundamental rule was adopted by this Court in the landmark decision of *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. Ed. 303. In that case this Court specifically held that, if the validity of the legislative classification for zoning purposes is fairly debatable, the legislative judgment must be controlling. At page 388, the Court said:

> "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judment must be allowed to control. Radice v. New York, 264 U.S. 292, 294, 68 L.ed. 690, 694, 44 Sup.Ct.Rep. 325."

In the more recent decision of *Village of Belle Terre* v. *Boraas*, 416 U. S. 1, 39 L. Ed. 2d 797, this Court summarized its broad holding in the *Euclid* case. At page 5 the Court said:

> The main thrust of the case in the mind of the Court was in the exclusion of industries and apartments and as respects that it commented on the desire to keep residential areas free of "disturbing noises"; "increased traffic"; and hazard of "moving and parked automobiles"; the "depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities." Id., at 394, 71 L Ed 303, 54 ALR 1016. The ordinance was sanctioned because the validity of the legislative classification was "fairly debatable" and therefore could not be said to be wholly arbitrary. Id., at 388, 71 L Ed 303, 54 ALR 1016.

The Court in *Belle Terre* at 416 U. S. 1, at page 5, referred to *Berman* v. *Parker*, 348 U. S. 26, 99 L. Ld. 27, in noting the broad scope of the police power, indicating: "We refused to limit the concept of public welfare that may be enhanced by zoning regulations."

In *Belle Terre* the Court was concerned with an attack involving equal protection rights under the Fourteenth Amendment. As here, the District Court had upheld the constitutionality of the ordinance, but the Court of Appeals had reversed. This Court specifically rejected the claim that fundamental constitutional rights were involved in a zoning ordinance which restricted occupancy of single-family dwellings. As here, it was charged that the ordinance bars people who were uncongenial to the present residents and that it expressed the social preferences of the residents for more congenial groups. It was urged that the ordinance was contrary to an open, egalitarian and integrated society. 416 U. S. 1, 7. This Court at pages 7 and 8 of its opinion used language which is particularly appropriate and diespositive to the case at bar. It said:

> It involves no procedural disparity inflicted on some but not on others such as was presented by Griffin v Illinois, 351 US 12, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055. *It involves no "fundamental" right guaranteed by the Constitution,* such as voting, Harper v Virginia Board, 383 US 663, 16 L Ed 2d 169, 86 S Ct 1079; the right of association, NAACP v Alabama, 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163; the right of access to the courts, NAACP v Button, 371 US 415, 9 L Ed 2d 405, 83 S Ct 328; or any rights of privacy, cf. Griswold v Connecticut, 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678; Eisenstadt v Baird, 405 US 438, 453-454, 31 L Ed 2d 349, 92 S Ct 1029. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be " 'reasonable, not arbitrary' " (quoting Royster Guano Co. v Virginia, 253 US 412, 415, 64 L Ed 989, 40 S Ct 560) and bears "a rational relationship to a [permissible] state objective." Reed v Reed, 404 US 71, 76, 30 L Ed 2d 225, 92 S Ct 251. (Emphasis added.)

Echoing *Euclid's* determination that single-family areas may be constitutionally protected, the Court at page 9 noted:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a

> land-use project addressed to family needs. This goal is a permissible one within Berman v Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

The Illinois Supreme Court has of course universally adhered to the proposition that the zoning ordinance is presumptively valid and the party assailing its validity must show by clear and convincing evidence that it is invalid. If there is any room for a reasonable difference of opinion, the court will not substitute its judgment for that of the legislative body. *Exchange National Bank* v. *County of Cook,* 25 Ill. 2d 434, 439; *Trendel* v. *County of Cook,* 27 Ill. 2d 155, 161; *Bennett* v. *Chicago,* 24 Ill. 2d 270, 273; *Sutter* v. *Village of Mundelein,* 27 Ill. 2d 589, 593.

The Supreme Court of Illinois in the recent case of *LaSalle National Bank* v. *City of Evanston,* 57 Ill. 2d 415, sustained the City of Evanston's Zoning Ordinance which, like the present ordinance, restricted residential density as applied to the subject property. The Court at page 428 of its opinion said:

> "The law governing the disposition of contentions challenging zoning classifications has been set forth in numerous decisions. As stated in *Exchange National Bank of Chicago* v. *County of Cook,* 25 Ill.2d 434, 439-40, 'It is always presumed, in an attack upon an ordinance, that the enactment is valid, and the burden of proving its invalidity falls upon the one who attacks the ordinance. (*Jacobson* v. *City of Evanston,* 10 Ill.2d 61.) Before a court will intervene it must be established by clear and convincing evidence that the ordinance, as applied to plaintiffs, is arbitrary and unreasonable and has no substantial relation to the public health, safety, or welfare. These rules are based upon a recognition that zoning is primarily a legislative function, subject to court review only for the purpose of determining whether the power, as exercised, involves an undue invasion of private constitutional rights without a reasonable justification in relation to public welfare. (*People ex rel. Joseph Lumber Co.* v. *City of Chicago,* 402 Ill. 321; *Morgan* v. *City of Chicago,* 370 Ill. 347.) Where it appears, from all the facts, that room exists for a difference of opinion concerning the reasonableness of a classification, the legislative judgment must be conclusive. (*Krom* v. *City of Elmhurst,* 8 Ill.2d 104.)"

The Illinois Supreme Court incidentally in the *LaSalle National Bank* case cited *Belle Terre* as authority.

No serious attempt was made by the plaintiffs to attack the reasonableness of the Zoning Ordinance on traditional zoning grounds. The Court of Appeals clearly did not attempt to make its determination in terms of normal zoning criteria. It in fact conceded that the ordinance would be valid if the "compelling interest" test was not to be applied. We have demonstrated above that the "compelling interest" test is not applicable because access to housing, even for low-income people, is not a fundamental constitutional right. It is clear that the plaintiffs failed to overcome the presumption of validity attaching to the Zoning Ordinance of the Village of Arlington Heights. The legislative judgment of the Village officials must clearly prevail under the holdings of this Court in *Euclid* and in *Belle Terre* and the holdings of the Illinois Supreme Court.

We respectfully suggest that the Zoning Ordinance in question was a reasonable exercise of the unquestioned legislative authority vested in the Village of Arlington Heights. The specious claim that the ordinance was racially discriminatory, was clearly not supported by the evidence and contrary to the factual findings of the trial court who heard all the witnesses and carefully examined all the evidence. We suggest that the factual situation is not really in doubt. Absent the Fourteenth Amendment claim, there can be no question but that the zoning restriction here challenged would stand.

We suggest that there is no basis in the Fourteenth Amendment or the decisions of this Court which would require the

valid legislative decisions of the local municipal body to be set aside merely to permit occupancy by a low-income group that might in fact have a higher percentage of minority members than the percentage already residing in the community. To rule otherwise would destroy the basis of zoning law in this country and elevate racial considerations beyond the legitimate needs of the police power.

III.

THE PLAINTIFFS LACK STANDING TO BRING THIS ACTION.

The Village filed a motion to strike the complaint and dismiss the cause, alleging in part that the plaintiffs had no standing to bring this action in the first instance. A predecessor judge denied the motion, and the trial court heard the matter on its merits. (B3) The trial court found however that this was not properly a class action.

Two Black plaintiffs who were non-residents of Arlington Heights testified. One resided in another Chicago suburb and the testimony failed to establish that he and his family were eligible by reason of income to reside in the Lincoln-Green project. The other, as the trial court had noted, chose to move to the south side of Chicago in order to buy a two-flat apartment building. The trial court concluded that the individual plaintiffs did not represent a definable and manageable class. One intervenor, Eluteria Maldonado, was a Mexican American who resided in Arlington Heights and therefore clearly could not have been denied the right to live in the Village because of the Village's zoning pattern. The trial court noted, with respect to the Metropolitan Housing and Development Corporation, "the plaintiff corporation acquires no different status than any other corporation merely because it has been created for the purpose of developing housing for low-income tenants."

The Court of Appeals did not deal in any manner with the question of standing. It is clear however that this Court's recent

opinion in the case of *Warth* v. *Seldin*, ... U. S. ....., 45 L. Ed. 2d 343, is dispositive of the question and clearly indicates that none of the plaintiffs here had standing to contest the Village's action. The Court of Appeals' decision was based solely on the Fourteenth Amendment. It made no decision with respect to the alleged violations of the Civil Rights Act or the Fair Housing Act. The trial court had found that no violations of either statute or of the Fourteenth Amendment had taken place.

It should be noted that the not-for-profit intervenor corporation (Northwest Opportunity Center) has no standing under the doctrine of *Warth* v. *Seldin*. The non-resident Black plaintiffs were not members of a class and clearly have no standing based upon their own factual situation. Maldonado was clearly not the victim of denial of equal protection because she was residing in the Village, and thus had not been "zoned out"; Metropolitan Housing, the other corporate plaintiff, had an interest which was contingent upon rezoning and upon the ability to secure 236 financing. The trial court specifically found that this latter corporation lacked the present capacity to carry out its proposed project. (B6, B7) This finding of fact was in no way disputed by the Court of Appeals which chose not to deal with this aspect of the situation. The actual owner of the property who might have had standing was not a party to the case.

The law is clear in Illinois that a contract purchaser whose contract is conditioned on rezoning, as is here the case, has no standing to challenge the validity of a zoning ordinance. *Clark Oil & Refining Corp.* v. *Evanston*, 23 Ill. 2d 48. This rule of law is even more compelling when, as here, the plaintiffs' rights were contingent not only on zoning but on securing financing under a program which no longer exists. Thus, the whole proposal may well be moot.

With respect to the Fourteenth Amendment question, it should be noted that the Court of Appeals specifically refused to set aside the trial court's finding that the Village had not dis-

criminated in the application of its zoning ordinance in denying the rezoning requested for the subject property. The Court specifically noted that the evidence does not require the conclusion that, had the proposed development been purely commercial, the requested change would have been granted. (A4) Thus, the equal protection argument of the Fourteenth Amendment was specifically rejected not only by the trial court, but the Court of Appeals as well.

We suggest moreover that, as noted by the trial court, the corporate plaintiff acquires no different status than any other corporation merely because it has been created for the purpose of developing housing for low-income tenants.

The application of the Fourteenth Amendment to a corporation in order to prevent racial discrimination is improper under the present factual situation. The corporation has no racial identity. It is conceded that it was treated exactly the same as any other property owner in similar circumstances would have been treated. This Court has frequently held that the application of the Fourteenth Amendment to corporations under such circumstances is highly suspect. See, for example, the dissenting opinion of Mr. Justice Douglas in *Wheeling Steel Corp.* v. *Glander*, 337 U. S. 562, 576; *Western Turf Assn.* v. *Hyman Greenberg*, 204 U. S. 359, 51 L. Ed. 520; and *Selover Bates & Co.* v. *Walsh*, 226 U. S. 112, 57 L. Ed. 146.

We believe that this Court should reverse the Court of Appeals on the merits. We suggest however that under the doctrine of *Warth* v. *Seldin*, these plaintiffs were not entitled to be in the Federal Court in the first instance and that our motion to dismiss, which was acted upon by the District Court on October 3, 1972, would undoubtedly have been granted had this Court's decision in the *Warth* case then been available to the trial judge.

CONCLUSION.

This Court should grant the Petition for Writ of Certiorari because the opinion of the Court of Appeals is clearly contrary to the Court's repeated holdings that the fact that legislation otherwise valid may have a disproportionate impact on the poor, including racial minorities, does not thereby render such legislation discriminatory governmental action. The zoning restriction challenged in the instant case would inevitably screen out some persons who could not afford housing in Arlington Heights, but that fact alone does not render the zoning restriction invalid or unconstitutional under the Fourteenth Amendment. It affects Blacks and Whites as well. The Court of Appeals erroneously has applied the "compelling interest" test in an area where this Court has held that such a test is improper. Moreover, the plaintiffs lacked standing under *Warth* v. *Seldin*.

We believe that the Court has already answered the question raised here by its opinions in *Palmer*, *Rodriguez* and *Belle Terre*, but the Court of Appeals has ignored those answers in its opinion here. If this Court concurs that these cases are in fact controlling, it should grant the writ because the Court of Appeals for the Seventh Circuit has in fact rendered a decision on an extremely important and far-reaching question in conflict with the decisions of this Court and other Courts of Appeal. If the Court believes that the question raised here has not in fact already been answered, it is a vitally important question of federal law that should be settled by this Court.

The holding of the Court of Appeals ignores the clear and continuing rule laid down by this Court in *Euclid* and *Belle Terre* and universally applied—the basic and unyielding principle that under the Equal Protection Clause, legislative solu-

tions must be respected if they in some way advance a legitimate state interest. That respect for the legislative judgment is paramount to the administration of justice in a democratic society.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners, Village of Arlington Heights, et al.

APPENDIX A.

No. 74-1326.

UNITED STATES COURT OF APPEALS,
Seventh Circuit.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit Corporation, et al.,
Plaintiffs-Appellants,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation, et al.,
Defendants-Appellees,

NORTHWEST OPPORTUNITY CENTER, INC., and ELUTERIA D. MALDONADO,
Plaintiffs-Appellants.

Argued Sept. 13, 1975 Decided June 10, 1975.

Before FAIRCHILD, Chief Judge, and SWYGERT and SPRECHER, Circuit Judges.

SWYGERT, Circuit Judge.

The question in this case is whether the Village of Arlington Heights' refusal to rezone a piece of property in order to permit the construction of a housing development for low and moderate income persons violates plaintiffs' constitutional rights.

Plaintiff Metropolitan Housing Development Corporation is an Illinois non-profit corporation organized in 1968 for the purpose of developing low and moderate income housing in the Chicago metropolitan area. It was selected by the Clerics of St. Viator, a Catholic religious order, to develop the land in question

for low and moderate income housing. The Clerics have title to eighty acres of land in Arlington Heights, a suburb northwest of Chicago, on part of which is situated their novitiate and high school. The land they wish to make available is a vacant fifteen acres in the southeast corner of the acreage. This property is bounded on the east by single family homes on the south by Euclid Avenue which has single family homes, on the side opposite St. Viator's property, and on the west and north by undeveloped St. Viator property. The Clerics entered into a ninety-nine year lease and sale agreement with Metropolitan Housing which provided that the land was to be developed for subsidized housing. The price was to be $300,000.

Metropolitan Housing proposed to use the land for a 190 unit townhouse development to be called "Lincoln Green." Under the plan more than sixty percent of the property was to be maintained as open space. The financing was to be provided pursuant to section 236 of the National Housing and Urban Development Act of 1968, 12 U.S.C. §1715z-1. These units would have been the only subsidized housing in Arlington Heights despite a great demand for such housing in that area.

The fifteen acres on which Lincoln Green was to be situated, like the remainder of the St. Viator property, has always been zoned R-3, single family; in fact, all of the land surrounding the property is zoned R-3. In order to build this development, however, the fifteen acres would have to be rezoned to R-5, multifamily. Since 1959 the Village has had its "Comprehensive Plan" that provides that an area should be zoned R-5 only if it represents a "buffer" zone or transition between single family zoning and commercial, industrial, or other high intensity uses.

Metropolitan Housing applied for a zoning change. As the district court found after trial, Metropolitan Housing "took the necessary administrative steps to obtain rezoning and made various changes in its proposal in an attempt to satisfy various objections which were raised by the Village's Plan Commission." Metropolitan Housing presented studies showing that Lincoln

Green would not cause major traffic problems and would make a net contribution to the Village in terms of taxes. Still, after holding public hearings, the Plan Commission recommended against the rezoning and on September 28, 1971 the Board of Trustees of the Village voted six to one to deny the request. The apparent reason for the rejection was that the property was in the middle of a completely single family area and would not act as a buffer zone as required by the Comprehensive Plan.

This suit was then instituted by Metropolitan Housing and the individual plaintiffs who seek to represent moderate income minority members who work or desire to work in Arlington Heights but cannot find decent housing there that they can afford. (Northwest Opportunity Center, another not-for-profit corporation, and Eluteria Maldonado have been allowed to intervene as plaintiffs.) The complaint alleges that the refusal to rezone perpetuated segregation and denied Metropolitan Housing the right to use its property in a reasonable manner in violation of the Fourteenth Amendment, the Civil Rights Act of 1866 (52 U.S.C.A. §§ 1981 and 1982), the Civil Rights Act of 1871 (42 U.S.C. § 1983), and the Fair Housing Act of 1968 (42 U.S.C. § 3601, et seq.). The relief requested is a declaratory judgment invalidating the Arlington Heights zoning ordinance as applied to the subject property and an injunction restraining defendants, among whom are the individual Trustees of the Village, from preventing or interfering with the development of the housing proposed by Metropolitan Housing.

After a trial on the merits the district court denied the plaintiffs any relief. It found that there were good faith reasons for the refusal to rezone and that the decision did not have a racially discriminatory effect. It held that plaintiffs were attempting to extend the Fourteenth Amendment beyond its outer limits. We disagree and reverse.

I.

[1] The first contention raised by plaintiffs is that they have been denied equal protection of the law in that the Village's zoning policy has been administered in a discriminatory manner. *See* Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). They claim that had Lincoln Green been a commercial development the zoning change would have been granted. We agree that this contention, if proved, would state a claim entitling plaintiffs to the relief sought. The district court, however, found that this claim was not proved, and we cannot say that the finding was clearly erroneous.

The evidence on this point relates to the results of other requests for zoning changes to R-5. Plaintiffs contend that sixty zoning changes to R-5 were granted to commercial developers and these changes show that the policy of using R-5 property only as a buffer zone had not been followed. Thus it is argued that the buffer zone explanation is really a "sham" excuse offered only because the Village did not wish to have a housing project for low and moderate income families.

The evidence, however, relating to both grants and denials of requested zoning changes does not require the conclusion that had Lincoln Green been a proposed commercial development the variance would have been granted despite the fact that the development would not serve as a buffer zone. Plaintiffs' own expert agreed that the Village had conformed to its Comprehensive Plan for approximately two-thirds of these sixty zoning changes. His report listed fifteen relevant instances of failure to adhere to the stated policy. Defendants' witness disputed this conclusion in regard to many of these and offered explanations for the others. Our review indicates that in only four relevant instances were there clear violations of the buffer zone policy and in another two instances a questionable violation. This must be balanced against the defendants' evidence concerning the zoning change refusals. That evidence shows that prior to the

Lincoln Green rejection there were two proposed changes rejected at least in part on the basis of the buffer zone policy and another four rejections which might have been on the basis though this was not stated. There were also two proposals that were withdrawn after the Plan Commission had recommended their rejection at least partly on the basis of the apartment policy. A third withdrawal after a rejection recommendation might have been for the same reason. Subsequent to the ruling on Metropolitan Housing's proposal, the Plan Commission recommended the rejection of two other requests on the ground of the buffer zone policy (one of these was then withdrawn and the other had not been passed upon by the Village Board at the time of trial).

The inference that can be drawn from this evidence is that Arlington Heights has been applying its buffer zone policy in considering requests for zoning changes thought not with absolute consistency. The evidence does not necessitate a finding that Arlington Heights administered this policy in a discriminatory manner. While more detailed factual findings concerning these zoning changes woud have been helpful, an examination of the record and exhibits indicates that the district court's finding that defendants were concerned with "the integrity of the Village's zoning plan" is not clearly erroneous.

II.

Plaintiffs also argue that even if the buffer zone policy has been properly applied the refusal to rezone the land has a racially discriminatory effect, and perpetuates Arlington Heights' segregated character. Regardless of the Village Board's motivation, if this alleged discriminatory effect exists, the decision violates the Equal Protection Clause unless the Village can justify it by showing a compelling interest. *See* Burton v. Wilmington Parking Authority, 365 U.S. 715, 725, 81 S.Ct. 856, 6 L.Ed.2d 45 (1963).

[2] The real question is whether there is a racially discriminatory effect for equal protection purposes. It is true that a greater percentage of blacks than whites are affected by the Village's decision since a greater percentage of blacks than of whites are in the low and middle income categories that are eligible for this proposed section 236 housing development. (Blacks comprise forty percent of the eligible prospective tenants.) But this disparity does not necessarily mean that the zoning change refusal had the type of racially discriminatory effect that requires the invocation of the compelling state interest tests. As indicated, the "class" that is affected by the Village's action is composed of individuals with low and moderate incomes. Racial minorities constitute a higher percentage of this class than they do percentagewise of the population in general within the Chicago metropolitan area. This fact alone, however, does not make decisions that affect those in the lower income bracket more than others racially discriminatory governmental actions. English v. Town of Huntington, 448 F.2d 319, 324 (2d Cir. 1971). Governmental action having a disproportionate impact on a class composed of an extremely high percentage of racial minorities might be classified as discriminatory in an equal protection sense. But that is not this case. Indeed, this narrow question has, we think, impliedly been answered by the Supreme Court in James v. Valtierra, 402 U.S. 137, 91 S.Ct. 1331, 28 L.Ed2d 678 (1971). *James* was concerned with a provision of the California Constitution that required state developed low-rent housing projects to be approved only upon a referendum vote. The briefs presented to the Court showed that at least some of the defeated housing proposals were in areas with a disproportionately high minority population and that racial minorities would have benefited more from the low income housing. Yet, the Supreme Court explicitly rejected the contention that the provision created a racial distinction that is subject to strictest scrutiny:

> The Article requires referendum approval for any low-rent public housing project, not only for projects which will be occupied by a racial minority. And the record here would not support any claim that a law seemingly neutral on its face is in fact aimed at a racial minority. 402 U.S. at 141, 91 S.Ct. at 1333.

Accordingly, *James* supports our analysis that racial disparity alone as its relates to the housing project under consideration does not amount to racial discrimination.

III.

[3] It is argued on behalf of plaintiffs that in the type of situation before us an analysis of racial discrimination must, however, extend further. *See* United States v. City of Black Jack, Missouri, 508 F.2d 1179 (8th Cir. 1974). The impact of the Village's refusal to rezone "must be assessed not only in its immediate objective but its historical context and ultimate effect." Kennedy Park Homes Association v. City of Lackawanna, New York, 436 F.2d 108, 112 (2d Cir. 1970).

The instant case reflects the unfortunate fact that historically the Chicago metropolitan area has been segregated in terms of housing. As we recently said in Clark v. Universal Builders, Inc., 501 F.2d 324, 334-35 (7th Cir. 1974), "Nor do we think it beyond the strictures of judicial notice to observe that there exists in Chicago and its environs a high degree of racial residential segregation." More specifically, the population of Arlington Heights in 1970 was 64,884, but only twenty-seven residents were black.[1] The four-township northwest Cook County area, of which Arlington Heights is a part, had a population increase from 1960 to 1970 of 219,000 people, but only 170 of these were black.[2] Indeed, the percentage of blacks in this area

1. According to statistics of plaintiffs' expert, demographer and urbanologist Pierre de Vise, Arlington Heights is the most residentially segregated community in the Chicago metropolitan area among municipalities with more than fifty thousand residents.

2. The impact of this statistic can be fully appreciated only in the context of the shift in employment opportunities during that same period. While the City of Chicago lost 230,000 jobs, the number of

actually decreased over this ten-year span while the percentage of the population in the entire Chicago metropolitan area that was black increased from fourteen percent to eighteen percent.

The ultimate effect of the Village's decision is, in all probability, that no section 236 housing will be built in Arlington Heights since plaintiffs were unable to find an economically feasible and suitable alternative site. Consequently a development for which blacks represent forty percent of the eligible applicants will not be built. Parenthetically, it must be noted that based solely on the cost of presently available housing of all types in the Chicago area, blacks would occupy five percent of the housing in Arlington Heights. We have no doubt that if Lincoln Green were built, it, unlike the rest of the Village, would be an integrated community. Though the building of this project might have only minimal effects in terms of alleviating the segregative housing problem for the entire Chicago area, it might well result in increasing Arlington Heights' minority population by over one thousand percent. What is even more crucial is that this suburb has not sponsored nor participated in any low income housing developments, nor does the record reflect any such plans for the future. Realistically, Lincoln Green appears to be the only contemplated proposal for Arlington Heights that would be a step in the direction of easing the problem of defacto segregated housing. Thus the rejection of Lincoln Green has the effect of perpetuating both this residential segregation and Arlington Heights' failure to accept any responsibility for helping to solve this problem.

---

jobs in the four-township Arlington Heights area rose from 100,000 to 200,000. Blacks, however, have not been able to take full advantage of these job opportunities. In 1970 only 137 of the 13,000 people who worked in Arlington Heights were black. Part of the explanation for this is that many black workers have been unable to find housing they can afford in Arlington Heights. A study issued by the Cook County Office of Economic Opportunity indicated that based on its survey almost all the black workers in Arlington Heights resided in Chicago. Moreover, the report stated that one of the main problems Arlington Heights' employers faced in hiring minorities was the lack of adequate housing within a reasonable distance of their plants.

[4] The defendants' answer is that even if the refusal to rezone does have this effect it cannot be deemed a "discriminatory" effect. Since no direct action attributable to Arlington Heights created the segregated housing pattern, the municipality argues that it has no affirmative duty to alleviate the problem. We do not agree.

Merely because Arlington Heights did not directly create the problem does not necessarily mean that it can ignore it. In Clark v. Universal Builders, Inc., 501 F.2d 324 (7th Cir. 1974), we, in effect, required that a builder forego "market prices" for homes built in black areas because the inflated "market prices" were a result of the segregated housing situation that could not simply be ignored. The builder could not "exploit" the situation even though he was in no way responsible for the discrimination that created the problem. To do so was itself an act of discrimination prohibited by 42 U.S.C. § 1982.

[5] In the instant case Arlington Heights has been ignoring what is essentially the same basic problem. Indeed, it has been exploiting the problem by allowing itself to become an almost one hundred percent white community. The Lincoln Green proposal represents an opportunity to help reverse this trend both in the entire Chicago area and more dramatically in the composition of the Village itself. Yet defendants argue that the Village need not consider such factors and that we should ignore them in determining whether there is a discriminatory effect in this case. But we cannot ignore segregation. This much is evident from Clark in terms of section 1982 and the Thirteenth Amendment and we think the principle is applicable to the Fourteenth Amendment in this case. *Cf.* United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, Florida, 493 F.2d 799, 810-811 (5th Cir 1974). Because the Village has so totally ignored its responsibilities in the past we are faced with evaluating the effects of governmental action that has rejected the only present hope of Arlington Heights making even a small contribution toward eliminating the pervasive problem of segregated housing. We therefore hold that under the facts of this case

Arlington Heights' rejection of the Lincoln Green proposal has racially discriminatory effects. It could be upheld only if it were shown that a compelling public interest necessitated the decision.

IV.

The argued justifications for the decision are based on two grounds: maintaining integrity of the zoning plan (buffer policy) and protecting neighboring property values. Neither of these can be deemed "compelling."

As we have already indicated, the Village has not even been consistent in applying its zoning plan when considering requests for zoning changes to R-5. Moreover, even if a municipality's desire to limit multifamily dwellings to instances in which they might serve as a transitional buffer zone could ever be a compelling interest, it is certainly not in this case. Lincoln Green will not be a highrise development, but merely a cluster of two-story townhouses no higher than the surrounding single family homes. As noted by two dissenting members of the Arlington Heights Plan Commission, in terms of density, architecture and most other characteristics, such townhouses are more similar to R-3 dwellings than R-5 buildings. The planning rationale behind the buffer zone policy has only minimal applicability to this type of lowrise, open-space development. It is not a sufficiently compelling interest to justify the racially discriminatory effect.

Nor do we find that the decision can be supported by the fact that neighboring property values might be diminished by as much as five to ten percent as asserted by defendants' witness. It is questionable whether this purely private monetary consideration could be a compelling interest. In this instance it is not. The explanation for this diminution in value is that the single family property owners had relied on the integrity of the Comprehensive Plan and Lincoln Green would be a variance from the expected totally single family neighborhood. Not only have there been other variances in Arlington Heights, but the neighboring residents certainly could not expect that the zoning plan would

always be adhered to even when a racially discriminatory effect would be the result.

Since no compelling justification for the decision exists, the refusal to grant the requested zoning change is a violation of the Equal Protection Clause of the Fourteenth Amendment. Accordingly, the judgment of the district court is reversed and this cause is remanded for entry of judgment in accordance with this opinion.

FAIRCHILD, Chief Judge (dissenting).

I agree that the district court's finding that defendants' refusal to grant plaintiffs a zoning variance was motivated by valid planning considerations is not clearly erroneous. I also agree that, if plaintiffs establish that the Village's enforcement of its zoning scheme makes construction of housing for low and moderate income individuals not reasonably possible, the refusal perpetuates racial segregation and, absent compelling governmental justification, the plaintiffs would be entitled to the relief they seek. United States v. City of Black Jack, Missouri, 508 F.2d 1179, 1186 (8th Cir. 1974).

The majority states that "[t]he ultimate effect of the Village's decision is, in all probability, that no section 236 housing will be built in Arlington Heights since plaintiffs were unable to find an economically feasible and suitable alternative site." I cannot agree that the record supports such a conclusion. The district court found that the Village "[has] zoned 60 tracts for the R-5 use and some of it is still vacant and available to plaintiff." I cannot say that this finding was clearly erroneous. A review of the record reveals that, at the time of the Village's decision to deny the variance, there were at least nine undeveloped tracts of land in excess of fifteen acres zoned R-5 (multi-family housing). The record does not contain a sufficient showing by plaintiffs that it was not reasonably possible to construct the proposed project on one of these sites.

Accordingly, I would affirm the district court's judgment in favor of defendants.

APPENDIX B.

No. 72 C 1453.

UNITED STATES DISTRICT COURT, N. D. Illinois.

Feb. 22, 1974.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation, et al.,

Plaintiffs,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation, et al.,

Defendants,

and

NORTHWEST OPPORTUNITY CENTER, INC., an Illinois not-for-profit corporation, et al.,

Plaintiffs-Intervenors.

DECISION.

McMILLEN, District Judge.

This case came on for trial on the merits, and the court has heard the evidence and considered the exhibits offered and received. The court has also considered the pre-trial stipulation and post-trial briefs filed by the parties and is fully advised in the premises. We find and conclude that judgment should be entered in behalf of all defendants, for the reasons stated hereinafter pursuant to F. R. C. P. 52(a).

Plaintiffs consist of a not-for-profit corporation created to develop housing for low and moderate income tenants and three individuals who seek to represent a class of such persons. The plaintiff corporation owns an option to purchase 15 acres

of vacant land from its present owner, the Clerics of St. Viator. A second not-for-profit corporation intervened as a co-plaintiff but its presence is irrelevant to this Decision.

Plaintiffs contend that their civil rights have been violated by virtue of a decision of the trustees of the Village of Arlington Heights, Illinois, not to rezone the land in question for multiple family housing. Specifically, they allege in Count I that defendants have perpetuated racial segregation by declining to rezone and, in Count II, that the plaintiff corporation has been denied the right to use its property in a reasonable manner. This allegedly constitutes a violation of the plaintiffs' civil rights under Sec. 1981, 1982 or 1983 of the Civil Rights Act and the Fair Housing Act of 1968. 42 U. S. C. §§ 1981, 1982 and 1983, and § 3601 et seq. respectively. No specific section of the Fair Housing Act is referred to in the pleadings and none seem applicable to the facts of this case.

Plaintiffs seek in the case at bar to extend the penumbra of the Fourteenth Amendment considerably beyond its present outer limits. They do not represent persons seeking to eliminate discrimination in existing facilities, whether residential or some other type. They do not represent a landowner seeking to use his property for some purpose within the existing zoning ordinances. Rather, the corporate plaintiff seeks to require defendants to rezone a vacant tract of land so that it can build a Federally subsidized low rent project on it, for occupancy by the class which the individual plaintiffs seek to represent. The justification proposed for using judicial processes to achieve rezoning is to supply housing for low income tenants who desire to work and live in the area. No cases have been cited by plaintiffs to support this extension of the Fourteenth Amendment into area-wide integration, but they rely primarily on familiar cases involving education, employment or public facilities. They also rely on Kennedy Park Homes Ass'n et al. v. City of Lackawanna, N. Y. et al., 436 F. 2d 108 (2nd Cir. 1970), cert. den. 401 U. S. 1010, 91 S. Ct. 1256, 28 L. Ed. 2d 546, where

defendants acquired a tract for discriminatory reasons and were ordered to restore its prior status. We do not find that these authorities support the plaintiffs' objectives in the case at bar, notwithstanding their laudatory motives.

The litigability of this and other legal issues have been decided by our predecessor judge on appropriate motions, and we find no need to reexamine his conclusions. We assume for the purposes of this Decision that the plaintiff corporation has sufficient interest in this property to give it standing to sue. The essence of the alleged offense is the refusal of the Village to accommodate a landowner's desire to use his property as he sees fit, although the plaintiff corporation acquires no different status than any other corporation merely because it has been created for the purpose of developing housing for low income tenants.

[1] The individual plaintiffs, in our opinion, do not represent a definable or manageable class. They purport to represent "low and moderate income minority-group members who work or desire to work in Arlington Heights but cannot find decent housing in Arlington Heights at rents they can afford". Obviously the members of this class would be too heterogeneous and varied to ever be brought into court, and their claims would raise a multitude of different factual questions. Nevertheless, one individual plaintiff, Electeria Muldonado, a Mexican-American, did appear and testify, and her presence along with the corporate plaintiff suffices to raise a case or controversy concerning the validity of the defendants' acts. Since we intend to decide this issue on its merits, we see no purpose to be served by debating the question of standing any further.

Defendants are accused of failing and refusing to rezone the 15 acre tract from an R-3 single-family detached residence use to an R-5 multi-family attached residence use (such as apartments). Plaintiffs took the necessary administrative steps to obtain rezoning and made various changes in its proposal in an attempt to satisfy various objections which were raised by the

Village's Plan Commission. Ultimately, however, the Plan Commission recommended against rezoning the property and the defendant trustees voted 6 to 1 against the proposition on September 28, 1971. Plaintiffs allege that this vote was motivated at least in part by racial discrimination against certain minority groups who work in or around Arlington Heights.

There is no direct evidence by which to determine the motives or mental processes of the trustees, and plaintiffs depend on circumstantial evidence. The crucial fact question, however, is whether the result of the defendant trustees' action caused racial discrimination. As has often been stated, (*e.g.*, Gautreaux et al. v. Romney, 448 F. 2d 731 at 738 (7th Cir. 1971), motives are irrelevant if the effect is illegal. If it is, we would reach the legal question of whether defendants can be required to change the zoning of the property.

Plaintiffs have failed to carry their burden of proving discrimination by defendants against racial minorities as distinguished from the under-privileged generally. They have proved that housing for low-earners is scarce in Arlington Heights and the surrounding suburban area, but this affects the entire group, not merely blacks or Mexican-Americans. The Fourteenth Amendment and the Civil Rights Act prohibit discrimination against blacks and certain other minorities but does not afford rights to poor people as such. Furthermore, some blacks and other minorities do live in Arlington Heights, and an 11% vacancy rate exists for rental property in the Village. What is lacking is low rent property, but even this is available at the corporate plaintiff's project just north of Arlington Heights and nearer to the principal employer of minorities than is the property on which the plaintiff now seeks to build new housing.

There are many reasons why members of minority groups would not necessarily move into the defendant village, besides alleged discriminatory violations. This is illustrated by one of the two blacks who testified as a plaintiff. After his employer had moved its plant to Arlington Heights, he voluntarily moved

farther away and thereby increased his commuting time from 35 minutes to one hour. His motive was to invest in a two-flat, not to live in a suburb near his employment.

[2] There can be no question but that plaintiffs and the group which they seek to represent would be benefited by this proposal. It is not denied by the defendants that citizens with low incomes would find better living conditions in the project and might be able to save expenses by living there. However, plaintiffs do not contend that their jobs are in jeopardy for want of a convenient and economical place to live, and their employers do not contend that they are deprived of an adequate supply of labor in the low-wage brackets. In fact, the employers are not parties hereto and no evidence was presented on their posture in this controversy. The legal issue on this point, therefore, is whether low-income minorities have a constitutional right to live in an area where they work or desire to seek work. Even more broadly, do low-income workers have a constitutional right to low-rental housing either where they work or elsewhere? We know of no such rule of law.

Plaintiffs did prove that the "highest and best use" of this property from an economic standpoint is for multi-family dwellings. High rise apartments such as have been built elsewhere on R-5 property in Arlington Heights are even more economically desirable for the landowner than the low-income project proposed by the plaintiff corporation. However, the issue in this case is whether defendants can be required to zone any real estate for multi-family dwelling if they have good faith reasons for not doing so.

Defendants' evidence shows that the property in question was originally zoned for single-family detached residences and has been continuously so zoned up to the present time. It has always been vacant and is completely surrounded by single family residences, with the exception of a parochial school on the north and the religious order's three-story dormitory on the west, a pre-existing non-conforming use. The village's zoning plan

contemplates the systematic development of land for particular uses with buffer zones or devices between different use zones. In the case at bar, the plaintiffs' project would not constitute a buffer between zones, because no other zone except R-3 exists in the area.

[3] On the other hand, the evidence shows that a multi-family development would seriously damage the value of the surrounding single-family homes and that its presence in the area is strongly opposed by large groups of citizens of the village. Their motive may well be opposition to minority or low-income groups, at least in part, but the circumstantial evidence does not warrant the conclusion that this motivated the defendants. They have zoned 60 tracts for the R-5 use and some of it is still vacant and available to plaintiff—as no doubt are some existing multi-family buildings. The weight of the evidence proves that the defendants were motivated with respect to the property in question by a legitimate desire to protect property values and the integrity of the Village's zoning plan. This is not an arbitrary or capricious act in derogation of the plaintiffs' 14th Amendment rights.

Lest plaintiffs conclude that they are faced with an insurmountable problem of proof, they are referred to a recent decision by this court in the case of Cousins et al. v. City Council of the City of Chicago et al., D. C., 361 F. Supp. 530. There the plaintiffs succeeded in proving that the defendant City discriminated against a black minority when it established the boundaries of the 7th Ward, as evidenced by certain acts and statements of an alderman, changes wrought in a pre-existing ward map, and certain circumstantial evidence. This decision, incidentally, is on appeal.

Another possible deficiency with plaintiffs' case is that the corporation lacks the present capacity to carry out its proposed project. It was to be financed pursuant to Sec. 236 of the National Housing Act of 1968. However, according to the evidence, all funds under this statute have been sequestered and

no projects are now being financed. The plaintiff's option with the owners would terminate if a Sec. 236 project could not be built on the property, but the present Federal funding situation would at least cause this Court to withhold any present relief to the plaintiffs. The sequestration of funds may continue permanently or may change, but once the land is zoned R-5, the process is well-nigh irreversible, and many varieties of buildings could then be constructed by the legal owners in the midst of the existing single-family residential area.

This leads to the question of whether the legal owner of the property has a Federal right to require zoning for the highest and best use. Aside from the statutes cited above (p. 209), no Federal rights are relied upon by the plaintiffs, and these statutes do not reach zoning *per se*. This particular issue was not decided on the motion to dismiss the complaint in Sisters of Prov. of St. Mary of Woods v. City of Evanston, 335 F. Supp. 396 (D. C. 1971).

Also lurking in the background is what conditions a municipal corporation can legitimately require before property is rezoned. Except for the issue of discrimination raised in Count I and the issue of arbitrary and capricious denial of the corporation to use its own property in a reasonable manner raised in Count II, however, the validity of local zoning procedures have not been contested by the plaintiffs and are properly reserved for the state courts.

It is therefore ordered, adjudged and decreed that judgment is entered on the Complaint and on the Intervening Complaint in favor of the defendants.

APPENDIX C.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
August 13, 1975.

Before

HONORABLE THOMAS E. FAIRCHILD, *Chief Judge*
HONORABLE LUTHER M. SWYGERT, *Circuit Judge*
HONORABLE WALTER J. CUMMINGS, *Circuit Judge*
HONORABLE WILBUR F. PELL, JR., *Circuit Judge*
HONORABLE JOHN PAUL STEVENS, *Circuit Judge*
HONORABLE ROBERT A. SPRECHER, *Circuit Judge*
HONORABLE PHILIP W. TONE, *Circuit Judge*
HONORABLE WILLIAM J. BAUER, *Circuit Judge*

METROPOLITAN HOUSING DEVELOPMENT CORP., et al.,
Plaintiffs-Appellants,

No. 74-1326

THE VILLAGE OF ARLINGTON HEIGHTS, et al.,
Defendants-Appellees,

NORTHWEST OPPORTUNITY CENTER, INC., ELUTERIA D. MALDONADO,
Intervening Plaintiffs-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(72 C 1453)

On consideration of the petition for rehearing and suggestion that it be heard *en banc* filed in the above-entitled cause, a vote of the active members of the Court was requested, and a majority of the active members of the Court having voted to deny a rehearing *en banc*.

IT IS ORDERED that the petition for rehearing and the suggestion that it be heard *en banc* be, and the same are hereby, DENIED.

NOTE: Judge Pell, Judge Tone and, Judge Bauer voted that said petition be granted.

APPENDIX D.

Amendment XIV, Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982)

§ 1981. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1982. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

Civil Rights Act of 1871 (42 U. S. C. § 1983)

§ 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party in-

jured in an action at law, suit in equity, or other proper proceeding for redress.

Fair Housing Act of 1968 (42 U. S. C. §§ 3601, et seq.)

§ 3604. *Discrimination in the sale or rental of housing.*—As made applicable by section 803 [§ 3603 of this title] and except as exempted by sections 803(b) and 807 [§§ 3603(b), 3607 of this title], it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin. (Apr. 11, 1968, PL 90-284, Title VIII, § 804, 82 Stat. 83.)

§ 3605. *Discrimination in the financing of housing.*—After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b) [§ 3603(b) of this title]. (Apr. 11, 1968, PL 90-284, Title VIII, § 805, 82 Stat. 83.)

§ 3606. *Discrimination in the provision of brokerage services.*—After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin. (Apr. 11, 1968, PL 90-284, Title VIII, § 806, 82 Stat. 84.)

OVERSIZE FOLDOUT(S) FOUND HERE IN THE PRINTED EDITION OF THIS VOLUME ARE FOUND FOLLOWING THE LAST PAGE OF TEXT IN THIS MICROFICHE EDITION.

SEE FOLDOUT NO 1-6

Supreme Court, U. S.
FILED
JAN 23 1976

APPENDIX—VOLUME I.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners.

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners.

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

INDEX TO APPENDIX.

	PAGE
Relevant Docket Entries	1
Complaint [filed June 12, 1972]	4
Defendants' Motion to Strike and Dismiss Cause [filed July 7, 1972]	20
Motion for Leave to Intervene as Party Plaintiffs and Intervening Complaint of Northwest Opportunity Center, Inc. and Eluteria D. Maldonado [filed September 8, 1972]	25

Order Defendants' Motion to Strike the Complaint and Dismiss Cause Denied [entered October 3, 1972] 34

Order Motion of Northwest Opportunity Center, Inc. and Eluteria D. Maldonado for Leave to Intervene as Party Plaintiffs Granted [entered October 4, 1972] 35

Defendants' Answer to Complaint of Original Plaintiffs [filed October 24, 1972] 36

Defendants' Answer to Complaint of Intervening Plaintiffs [filed November 1, 1972] 52

Defendants' Motion to Reconsider Order of October 3, 1972 (Denying Defendants' Motion to Strike and Dismiss Cause) [filed November 3, 1972] 57

Order Defendants' Motion to Reconsider Order of October 3, 1972, Denied [entered January 2, 1973] 60

Decision on Plaintiffs' Discovery Motions [entered July 10, 1973] 62

Final Pretrial Order [filed October 30, 1973] 64

Amendments to Final Pretrial Order [filed November 6, 1973, and January 3, 1974] 107

Decision and Judgment [entered February 22, 1974]* .. 108

Notice of Appeal of Plaintiffs and Intervening Plaintiffs [filed March 22, 1974] 109

Certificate of Service 110

Order Reversing Cause [entered June 20, 1975] 111

Opinion of the Circuit Court of Appeals for the Seventh Circuit [filed June 10, 1975]**

* The opinion of the District Court is included as Appendix B, pp. B1 through B7 of the Appendix to the Petition for Writ of Certiorari filed in this cause. The opinion is also reported at 373 F. Supp. 208.

** The opinion of the Court of Appeals is included as Appendix A, pp. A1 through A11 of the Appendix to the Petition for Writ of Certiorari filed in this cause. The opinion is also reported at 517 F. 2d 409.

The following Exhibits appear in Appendix Volume II:

Plaintiffs' Exhibit 51—
Map of Area 113

Plaintiffs' Exhibit 52—
R-5 Zoning 114

Defendants' Exhibit 1—
Existing Land Use, Existing Zoning 115

Defendants' Exhibit 2—
Photographs of Subject Site and Adjacent Areas ..116-117

Defendants' Exhibit 11—
Requests for Multiple Family Zoning 118

Defendants' Exhibit 12—
Key Map for Multiple Family Zoning Area 119

Defendants' Exhibit 13—
Land Zoned but Not Developed for Multi-Family .. 120

Defendants' Exhibit 14—
Photographs of South Side of Euclid Avenue, West Side of Drury Lane, and West Side of Dryden Avenue 121-123

APPENDIX.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division, No. 72 C 1453.

RELEVANT DOCKET ENTRIES.

Complaint [filed] .....June 12, 1972

Defendants' Motion to Strike Complaint and Dismiss Cause [filed] .....July 7, 1972

Defendants' Memorandum in Support of Motion to Strike Complaint and Dismiss Cause [filed] .....July 12, 1972

Plaintiffs' Memorandum in Opposition to Defendants' Motion to Strike Complaint and Dismiss Cause [filed] .....July 24, 1972

Motion for Leave to Intervene as Party Plaintiffs and Intervening Complaint of Northwest Opportunity Center, Inc. and Eluteria D. Maldonado [filed]..... .....September 8, 1972

Order Defendants' Motion to Strike Complaint and Dismiss Cause Denied [entered] .....October 3, 1972

Order Motion of Northwest Opportunity Center, Inc. and Eluteria D. Maldonado for Leave to Intervene as Party Plaintiffs Granted [entered] .....October 4, 1972

Defendants' Answer to Complaint of Original Plaintiffs [filed] .....October 24, 1972

Defendants' Answer to Complaint of Intervening Plaintiffs [filed] .....November 1, 1972

Defendants' Motion to Reconsider Order of October 3, 1972 (Denying Defendants' Motion to Strike Complaint and Dismiss Cause) [filed] .....November 3, 1972

Order Cause Reassigned to Judge McMillan [entered]. . . . . November 10, 1972

Order Defendants' Motion to Reconsider Order of October 3, 1972, Denied [entered] . . . . . January 2, 1973

Plaintiffs' Motion for Orders Compelling Discovery [filed] . . . . . May 22 and 24, 1973

Decision on Plaintiffs' Discovery Motions [entered]. . . . . July 10, 1973

Final Pretrial Order [filed] . . . . . October 30, 1973

Amendments to Final Pretrial Order [filed] . . . . . November 6, 1973 and January 3, 1974

Trial . . . . . January 3, 4, 7, 8, 9, and 10, 1974

Decision [filed] . . . . . February 22, 1974

Judgment [entered] . . . . . February 22, 1974

Notice of Appeal of Plaintiffs and Intervening Plaintiffs [filed] . . . . . March 22, 1974

IN THE UNITED STATES COURT OF APPEALS,

For the Seventh Circuit.

No. 74-1326.

Motions of the Ad Hoc Housing Committee and the Minority Industrial Relations Council for leave to appear as amicus curiae . . . . . June 14, 1974

Order denying motions for leave to appear as amicus curiae . . . . . June 20, 1974

Heard and Taken under advisement . . . . . September 13, 1974

Final Judgment Order Reversing, with Costs and Remanding (entered) . . . . . June 10, 1975

Opinion by Judge Swygert (filed) . . . . . June 10, 1975

Appellees petition for rehearing en banc filed. . . . June 19, 1975

Letter sent by Clerk requesting answer to appellees petition for rehearing . . . . . June 23, 1975

Appellants Answer to Petition for Rehearing en banc filed . . . . . July 3, 1975

Order entered Denying Petition for Rehearing en banc. . . . . August 13, 1975

Appellees Motion for Stay of Mandate pending Application for Writ of Certiorari filed . . . . . August 20, 1975

Appellants answer in opposition to Motion for Stay of Mandate filed . . . . . August 22, 1975

Order Staying Mandate to and including September 30, 1975 entered . . . . . September 11, 1975

Appellees Motion to Extend Stay of Mandate pending Application for Certiorari filed . . . . . September 29, 1975

Order entered Staying Mandate for a period of 15 days pursuant to Rule 41(b) . . . . . October 2, 1975

Mandate Issued . . . . . October 29, 1975

Filed Notice of Filing Petition for Certiorari from Supreme Court, 75-616 . . . . . October 30, 1975

File Receipt for Mandate and Record from District Court . . . . . November 11, 1975

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation, and

ISAAC GREENWOOD, ARTHUR GUTHRIE, and WILLIE RANSOM, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE VILLAGE OF ARLINGTON HEICHTS, a municipal corporation,

RALPH CLARBOUR, ALICE HARMS, FRANK PALMATIER, JAMES RYAN, THEODORE SALINSKY, and DWIGHT WALTON, in their official capacity as Trustees of the Village of Arlington Heights,

JOHN WOODS, in his official capacity as Mayor of the Village of Arlington Heights,

L. A. HANSON, in his official capacity as Village Manager of the Village of Arlington Heights,

MARTIN MUNSEN, in his official capacity as Director of Buildings and Zoning of the Village of Arlington Heights,

Defendants.

Civil Action
No.

COMPLAINT.

I. *Nature of Action.*

1. This is a suburban zoning case in which some of the Plaintiffs allege that their civil rights under the statutes and

the Constitutions of the United States and of the State of Illinois have been violated by the Village of Arlington Heights, Illinois, and others allege that their property rights guaranteed by the Constitutions of the United States and the State of Illinois have similarly been violated. This suit is occasioned by the refusal of the Village Board of Trustees of the Village of Arlington Heights to rezone property in order to permit the construction of a housing development which would contain federally-assisted low and moderate income housing units.

2. Plaintiffs are (a) Black persons who presently work in Arlington Heights and cannot find decent housing in Arlington Heights at a price they can afford to pay, and qualify for and seek housing of the type proposed to be built and (b) the obligor under a contract to purchase the property, which has as its corporate purpose the development of low and moderate income housing for persons of all races. The individual plaintiffs and the contract-obligor allege that the refusal of the Village of Arlington Heights to rezone the subject property violates the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), the Fair Housing Act of 1968 (42 U. S. C. §§ 3601 *et seq.*), and Article I, section 2 of the Illinois Constitution and 24 Ill. Rev. Stat. § 11-13 *et seq*. The contract-obligor alleges that this action by the Village of Arlington Heights violates its rights to use property in which it has an interest in a reasonable fashion without unreasonable, arbitrary, and capricious regulations by the state, as guaranteed by the Fourteenth Amendment of the United States Constitution and by Article I, section 2 of the Illinois Constitution.

3. The relief sought is a declaratory judgment invalidating the zoning ordinance as applied to the subject property and an injunction restraining the Defendants from interfering with the development as proposed by Metropolitan Housing Development Corporation.

II. *Jurisdiction.*

4. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. § 1331 and to 28 U. S. C. § 1343(3) and (4), in conjunction with the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), and Civil Rights Act of 1871 (42 U. S. C. § 1983), and the Fair Housing Act of 1968 (42 U. S. C. § 3601 *et seq.*). The amount in controversy, exclusive of interest and costs, exceeds $10,000.

5. This is an action for declaratory relief under 28 U. S. C. §§ 2201 and 2202 and jurisdiction is also invoked pursuant thereto.

6. With respect to claims arising in whole or in part under the Constitution or statutes of the State of Illinois, Plaintiffs invoke the pendent jurisdiction of this Court.

III. *Parties Plaintiff.*

7. Metropolitan Housing Development Corporation ("MHDC") is a not-for-profit corporation organized under the laws of the State of Illinois, with corporate offices at 155 North Wacker, Chicago, Illinois. MHDC was formed in 1968 by The Leadership Council for Metropolitan Open Communities, an Illinois not-for-profit corporation dedicated to the goal of equal housing opportunities for minorities, for the purpose of developing low and moderate income housing in the Chicago metropolitan area. Its Board of Directors consists of Black, White and Spanish-speaking representatives of industry, government, civic organizations, and the professions from Chicago and its suburbs. MHDC received grants from the State of Illinois for operational and developmental purposes.

8. Plaintiffs Isaac Greenwood, Arthur Guthrie and Willie Ransom are minority group persons who work in Arlington Heights but cannot find decent housing in Arlington Heights at

a price they can afford to pay. They live in overcrowded and substandard housing outside Arlington Heights.

More particularly:

a. Isaac Greenwood, a Black, is employed at Honeywell, Inc. in Arlington Heights. He lives with his wife and three children in an apartment on the South Side of Chicago, in a segregated area with buildings having building code violations. There is no public transportation between his home and his job and he therefore drives the long distance daily, a time-consuming trip involving excessive expense. The Greenwoods have been looking for, but have been unable to find, decent housing at a price they could afford in the vicinity of Mr. Greenwood's job. The Greenwoods seek, and are eligible for, housing of the type Plaintiff MHDC seeks to build in Arlington Heights.

b. Arthur Guthrie, a Black, is employed at Honeywell, Inc. in Arlington Heights. He lives with his wife and two sons in an apartment on the South Side of Chicago, in a segregated area with buildings having building code violations. There is no public transportation between his home and his job and he therefore drives the long distance daily, a time-consuming trip involving excessive expense. The Guthries have been looking for, but have been unable to find, decent housing at a price they could afford in the vicinity of Mr. Guthrie's job. The Guthries seek, and are eligible for, housing of the type Plaintiff MHDC seeks to build in Arlington Heights.

c. Plaintiff Willie Ransom, a Black, is employed at Honeywell, Inc. in Arlington Heights. He is divorced and lives with his minor son in an apartment in Evanston, in a segregated area with buildings having building code violations. There is no public transportation between his home and his job and he therefore drives the long distance daily, a time-consuming trip involving excessive expense. Plaintiff Ransom has sought, but has been unable to locate, adequate housing for himself and his son in the vicinity of his job. Plaintiff Ransom seeks and would

qualify for, the housing which Plaintiff MHDC seek to build in Arlington Heights. Plaintiffs Greenwood, Guthrie and Ransom bring this action under Rule 23(a) and 23(b) (2) and (3) of the Federal Rules of Civil Procedure on their own behalf and on the behalf of others similarly situated; namely, Chicago area low and moderate income minority-group members who work or desire to work in Arlington Heights but cannot find decent housing in Arlington Heights at rents they can afford. The members of the class on behalf of whom Plaintiffs Greenwood, Guthrie and Ransom sue are so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of Plaintiffs Greenwood, Guthrie and Ransom are typical of the claims of the class; and Plaintiffs Greenwood, Guthrie and Ransom will fairly and adequately protect the interests of the class. The Defendants have acted or refused to act on grounds generally applicable to the class, thus making appropriate final injunctive relief with respect to the class as a whole; and questions of law and fact common to members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for the fair and efficient adjudication of this suit.

IV. *Parties Defendant.*

9. The Village of Arlington Heights (the "Village") is a municipal corporation established under the laws of the State of Illinois.

10. Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan, Theodore Salinsky, and Dwight Walton are the members of the Village Board of Trustees (the "Trustees"). They are sued in their official capacity.

11. John Woods is the Mayor of the Village. He is sued in his official capacity.

12. L. A. Hanson is the Village Manager. He is sued in his official capacity.

13. Martin Munsen is the Director of Building and Zoning of the Village. He is sued in his official capacity.

V. *Events Leading to the Filing of This Lawsuit.*

14. The Clerics of St. Viator is a Catholic religious order formed in 1890. It is the owner in fee of an eighty-acre parcel located in the Village of Arlington Heights, bounded on the north by Oakton Street, on the west by Dryden Place, on the south by Euclid Avenue and on the east by the back property line of homes fronting on Drury Lane.

15. On November 7, 1970 the Clerics entered into a ninety-nine year lease and an accompanying agreement to sell to MHDC a vacant parcel (the "subject property") of fifteen acres (643,400 square feet) in the southeast corner of the Clerics' property. The subject property is legally described as follows:

> That part of the East half of the Southeast quarter of the Northeast quarter of Section 29, Township 42 North, Range 11, East of the Third Principal Meridian, bounded and described as follows: Beginning at a point on the East line of said Southeast quarter of the Northeast quarter, 40 feet North of the Southeast corner thereof, thence West on North line of South 40.0 feet of said East half of Southeast quarter of Northeast quarter, a distance of 607.99 feet to the East line of the West 50.0 feet of said East half of the Southeast quarter of the Northeast quarter; thence North on said East line of West 50.0 feet of the East half of the Southeast quarter of the Northeast quarter, a distance of 424.0 feet; thence east at right angles to last described course, a distance of 140 feet; thence Northeasterly on a line forming an angle of 59 degrees 30 minutes 00 seconds to the left from the prolongation of the last described course, a distance of 190.0 feet; thence Northwesterly at right angles to the last described course, a distance of 274.41 feet to said East line of West 50.0 feet of East half of the Southeast quarter of the Northeast quarter; thence North on said East line of West 50.0 feet of East half of the Southeast quarter of the Northeast quarter, a distance of 424.44 feet to the South line

of the North 131.03 feet of said East half of the Southeast quarter of the Northeast quarter; thence East on said South line of North 131.03 feet of the East half of the Southeast quarter of the Northeast quarter, a distance of 609.18 feet to the East line of said Southeast quarter of the Northeast quarter; thence South on said East line of the Southeast quarter of the Northeast quarter, a distance of 1151.21 feet, more or less, to the place of beginning, all in Cook County, Illinois.

16. The subject property abuts Viatorian property to the north and west, a heavily travelled road to the south, and single-family homes to the east. The Viatorian property to the north contains St. Viator High School, recreation fields and a nursery. The Viatorian property immediately to the west includes the Viatorian novitiate, a three-story hotel-like structure containing communal living facilities and a Montessori school.

17. The subject property, like the remainder of the Viatorian parcel, is presently zoned R3, which would require the property to be developed with single family detached residences with a maximum density of five units to the acre; under R3 zoning, approximately 60 single-family detached residences could be built on the subject property.

18. Plaintiff MHDC proposes to build on the subject property a planned unit development of 190 single family attached homes (the "proposed development") under the R5 multi-family zoning classification. The proposed development will be built for low and moderate income families and individuals with subsidies available under § 236 of the National Housing Act of 1968. It will consist of clusters of single-family units, all of which are two-stories or less in height and have separate private entrance ways and private patios. There will be 100 one-bedroom units (most of which will be for the elderly housing market), 48 two-bedroom units, 30 three-bedroom units, and 12 four-bedroom units. Buildings will cover only 11.89% of the subject property, and 61.96% of the subject property will be landscaped open spaces, including parks and play areas.

The mature trees along Euclid Avenue are to be retained, and additional trees and bushes are to be planted, including bushes along the east side of the property to provide a buffer between the proposed development and the homes to the East.

19. The proposed development meets all the requirements of section 236 of the National Housing Act of 1968. The development is planned predominantly for moderate income families, but will also include units to be rented at market and low income units under available federal programs. Plaintiff MHDC will seek to implement vigorously the affirmative marketing requirements of the Department of Housing and Urban Development and therefore expects that the development will be racially integrated.

20. MHDC has expended in excess of $35,000 developing its proposal and preparing for hearings before the Arlington Heights Plan Commission and the Arlington Heights Trustees.

21. On January 29, 1971, MHDC petitioned the Village of Arlington Heights to rezone the subject property from R3 to R5. The proposed development meets all the requirements of the R5 zoning classification, a classification for multi-family units, as well as requirements of all other village codes.

22. Prior to the filing of that petition MHDC consulted with the Village staff for preliminary review of the proposed development prior to public hearing. In every instance in which changes were suggested by the staff, including changes in layout to make the area more accessible to fire engines, in garbage disposal areas and in drainage, the changes were incorporated into the MHDC plans.

23. On March 3, 1971, April 21, 1971 and June 16, 1971, public hearings were held by the Arlington Heights Plan Commission.

24. MHDC attempted to answer every objection to the plans raised by the Plan Commission members. In response to

the suggestion that MHDC might "desert" the development, the MHDC Board of Directors on May 13, 1971 passed a resolution in which MHDC voted to retain permanent and complete authority over the proposed development. In response to concern that the development may be inadequately managed and maintained, MHDC secured from leading real estate management firms which service Arlington Heights letters indicating that they would be very interested in managing the development. In addition, MHDC on May 13, 1971 by resolution declared its willingness to create a Citizens Advisory Board, to be selected by the Mayor of the Village, which would work with MHDC in the planning and management of the proposed development.

25. The Chairman of the Plan Commission read into the record reports of the Fire Chief, the Building Commissioner, the Director of Public Works, and the Acting Director of Engineering. All but one of the reports (that on water run-off) contained no mention of any problems. The report on water run-off suggested certain changes which MHDC then incorporated in its plans for the proposed development.

26. Nevertheless, on June 16, 1971 the Plan Commission voted 7 to 2 to recommend to the Village Board of Trustees that it reject MHDC's rezoning petition.

27. On September 28, 1971, the Village Board of Trustees heard presentations before voting 6 to 1 to deny MHDC's rezoning petition.

28. In response to suggestions made shortly after the petition was denied indicating that Arlington Heights recognized the need for low and moderate income housing and would cooperate in considering other sites, MHDC made an extensive study of available sites within the Village, but found no other sites which were appropriate for a low and moderate income development and which could be purchased at a price within the maximum allowable land cost for a Section 236 development.

29. On March 27, 1972 the Village Board of Trustees approved the report of the Joint Study Committee on Low-Moderate Income Housing which recognized the need for low and moderate income housing in Arlington Heights and recommended the development of 150 to 250 units of moderate income housing and 50 units of low income housing in Arlington Heights within the next two years. However, the Village Board subsequently failed to pass an enabling ordinance and no further action has been taken. The proposed development conforms with the principles governing the planning for low and moderate income housing contained in the above report.

VI. *The Civil Rights Context.*

30. The failure of the Village of Arlington Heights to rezone the subject property from an R3 single-family classification to an R5 multiple-family classification is racially discriminatory in that it prevents low and moderate income minority group members, who make up a substantial portion of the low and moderate income population of the Chicago area, from moving from areas of minority concentration to a white area, thereby denying them the opportunity to live in a decent integrated environment and perpetuating residential segregation in the Chicago area.

31. Arlington Heights is one part of the rapidly expanding white suburban Chicago area which is witnessing the development of most of the new employment facilities and housing in the Chicago area. Arlington Heights had a population in 1970 of 64,884, more than twice its 1960 population of 27,878 and more than seven times its 1950 population of 8,768. The black population of Arlington Heights was 1 in 1950, 4 in 1960, and 27 in 1970. In addition to the growth in its population, the Village has also annexed substantial adjacent territory in recent years.

32. The Centex Industrial Park was developed in the vicinity of Arlington Heights and contributes substantial amounts in

taxes to High School District No. 214 serving Arlington Heights. A number of industries have also built plants within the Village limits of Arlington Heights, among them Honeywell, Inc. These plants employ blue collar forces including substantial numbers of minority group employees.

33. Minority group employees have been unable to find decent housing in Arlington Heights, and must, therefore, commute long distances to their jobs in Arlington Heights. These workers subsidize residents of the Village by coming in the morning to man tax-producing properties of the Village but must leave at night because the Village does not permit housing for them.

34. Because of the difficulty, time and expense of commuting from ghetto areas to Arlington Heights, many minority group members are effectively discouraged from seeking employment in Arlington Heights and The Centex Industrial Park.

35. At the same time that white suburbs have become increasingly prosperous with the rapid increase in their tax bases as industry has moved to the suburbs, minority group members who work or desire to work in Arlington Heights have been confined to areas where the loss of an adequate tax base has meant deterioration of schools and municipal services.

36. There is a desperate need for decent housing for those who work or desire to work in Arlington Heights but cannot afford the housing presently available in the Village. Arlington Heights itself has recently recognized this need in the report of the Joint Study Commission on Low-Moderate Income Housing.

37. The Village of Arlington Heights has zoned its land predominantly for single-family houses which, absent subsidies, low and moderate income persons cannot afford. Although federal subsidies are available under the National Housing Act of 1968 for the construction of single-family houses, the cost of land in Arlington Heights and the cost of construction in the

Chicago metropolitan area prevent the development of such low and moderate income housing in Arlington Heights.

38. Arlington Heights' exclusion of multi-family dwellings extends only to low and moderate income housing since the Village has often rezoned land for multi-family units designed for the relatively affluent. Thus, only society's wealthier members, overwhelmingly white, have been able to take advantage of the environmental benefits of Arlington Height's land-use planning. Poorer persons, including a substantial number of minority group members, have been zoned out of Arlington Heights.

VIII. *The Zoning Context.*

39. The proposed rezoning is consistent with the Village's zoning policy and practice and is a reasonable use of the subject property, meeting a critical regional and community need. There are no compelling zoning and planning reasons for denying the rezoning application.

40. Property situated similarly to the subject property has been rezoned upon the landowner's request to R5. In numerous cases the rezoned property was adjacent to single-family and institutional uses.

41. In addition to the need for low and moderate income housing for nonresident workers and potential workers in Arlington Heights, there is a need, recognized by Arlington Heights itself, for low and moderate income housing for elderly residents of Arlington Heights who can neither afford to maintain and pay property taxes on single-family homes nor afford the apartments presently available in Arlington Heights.

42. The proposed development is consistent with Arlington Heights' zoning policy and practice as it concerns use of multi-family districts as transitional use districts or buffers between single-family districts and more intense uses. The Village has frequently zoned land for R5 to buffer R3 single-family districts from institutional uses, especially high schools,

and from commercial and industrial uses. Moreover, the Village apartment policy, adopted May 4, 1970, explicitly recognizes that a useful function of apartments is that of buffering single-family districts from uses that conflict with them. The proposed development serves precisely this function, by buffering the single-family houses to the east of the subject property from the high school to the northwest and, more importantly, from the Viatorian novitiate, an imposing three-story structure with communal living facilities, which abuts the subject property to the West.

43. The proposed development would not adversely affect public facilities available to service the subject property. The site is centrally located in Arlington Heights and within walking distance of public transportation and stores; fire and police protection is more than adequate; the impact of the proposed development on the capacity of schools would be less than the impact of 60 tract houses which could be built under the present R3 zoning; the impact on traffic will not be substantial; and the sewer system is more than adequate for the development.

44. Tax revenues attributable to the proposed development would exceed municipal and school expenditures attributable thereto, thus benefiting the three affected taxing units, the Village of Arlington Heights, School District No. 25 and School District No. 214.

45. The proposed development will not adversely affect the character of the surrounding neighborhood and will not diminish property values. The proposed development is aesthetically attractive, using high quality building materials, interesting design concepts, and clusters which are arranged as to give substantial privacy while preserving substantial open landscaped

common areas. The buildings in the proposed development are two stories high or less, harmonizing with the nearby dwellings. The houses to the east will be separated by foliage and fences, the buffering materials to be the choice of the Village. The proposed development of attached single-family homes is a small-scale one, at the low density of 12.7 units per acre, designed to blend in with and reaffirm the character of the single-family houses to the east. It will harmonize with these houses and retain a single-family atmosphere in contrast to most of the apartment projects which have been approved by Arlington Heights adjacent to single-family neighborhoods, among them high-density highrises, garishly designed and inadequately buffered by fences or foliage from abutting property.

COUNT I.

46. Defendant Village and Defendant Trustees, in refusing to rezone the subject property from R3 to R5, have discriminated against the individual plaintiffs and the class they represent by perpetuating racial segregation in housing and in so doing have denied the class represented by the individual Plaintiffs integrated housing opportunities and an opportunity to share in the environmental benefits of land-use planning, while extending those opportunities to wealthier whites who desire to live in Arlington Heights. Defendant Village and Defendant Trustees have violated the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), and the Fair Housing Act of 1968 (42 U. S. C. § 3601 *et seq.*) and Article I, section 2 of the Illinois Constitution. In addition, such action, which results

in the exclusion of racial minorities from the Village is not in the general welfare, thereby violating the Illinois Zoning Enabling Act, 24 Ill. Rev. Stat. § 11-13 *et seq.*, and is beyond the police power of the state, thereby violating the due process clauses of the Fourteenth Amendment of the United States Constitution and of Article I, section 2 of the Illinois Constitution.

COUNT II.

47. Defendant Village and Defendant Trustees, by unreasonably, arbitrarily, and capriciously denying Plaintiff MHDC its right to use the property in which it has an interest in a reasonable manner and by failing to consider regional needs, have violated the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, section 2 of the Illinois Constitution.

WHEREFORE, Plaintiffs pray that the Court:

1. Expedite this cause in every way and hear it at the earliest possible date, pursuant to 42 U. S. C. § 3614.

2. Issue a judgment declaring that the denial of Plaintiff MHDC's petition by the Village and the Trustees is unconstitutional, that the zoning ordinance of the Village of Arlington Heights is arbitrary, unreasonable, capricious, and unconstitutional in its application to the subject property, and that the proposed use is a reasonable use of the subject property.

3. Enjoin all Defendants from enforcing any zoning ordinance or other restriction as to the subject property which would prohibit the proposed development and from refusing to take any affirmative steps necessary for Plaintiff MHDC to begin and complete construction.

4. Retain jurisdiction over this action until the completion of development.

5. Allow the Plaintiffs costs herein and any such other relief as the Court finds just and proper.

Respectfully submitted,

/s/ F. WILLIS CARUSO,
F. Willis Caruso,
155 North Wacker Drive,
Chicago, Illinois 60606,
Telephone: 236-9850.

/s/ CAROL PETERSEN,
Carol Petersen,
231 South LaSalle Street,
Chicago, Illinois 60604,
Telephone: CE 6-4500.

/s/ WILLIAM J. MCNALLY,
William J. McNally,
53 West Jackson Boulevard,
Chicago, Illinois 60604,
Telephone: 939-5797.

/s/ GERALD MULLER,
Gerald Muller,
53 West Jackson Boulevard,
Chicago, Illinois 60604,
Telephone: 939-5797.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

MOTION TO STRIKE COMPLAINT AND DISMISS CAUSE.

Now come the Village of Arlington Heights, a municipal corporation, Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan, Theodore Salinsky, and Dwight Walton, in their official capacity as Trustees of the Village of Arlington Heights, John Woods, in his official capacity as Mayor of the Village of Arlington Heights, L. A. Hanson, in his official capacity as Village Manager of the Village of Arlington Heights, and Martin Munsen, in his official capacity as Director of Buildings and Zoning of the Village of Arlington Heights, by Jack M. Siegel, their attorney, and move this Honorable Court to strike the complaint heretofore filed herein and dismiss this cause. In support of said motion, defendants say as follows:

1. That the defendant, John G. Woods, was not the Mayor of the Village of Arlington Heights during the period in which the events complained of herein took place and did not participate in any of the events complained of. That the defendant, Dwight Walton, as Village Trustee, voted against the motion to deny the petition for rezoning and has therefore not taken part in any of the acts alleged to have been in violation of law. That the defendant, L. A. Hanson, in his official capacity as Village Manager of the Village of Arlington Heights is the administrative head of the Village and does not take part in legislative decisions; that he had no part in any of the acts complained of as supposed violations of law. That Martin Munsen, as Director of Buildings and Zoning of the Village of Arlington Heights, is

a purely ministerial officer and there are no allegations in the complaint showing wherein he participated in any of the legislative decisions now attacked by the plaintiffs herein. That the defendants, Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan and Theodore Salinsky acted solely as members of a legislative body and are not necessary parties to this action. All individual defendants and each and every one of them should therefore be dismissed from this action.

2. That the complaint herein fails to set forth a cause of action under the Fourteenth Amendment to the Constitution of the United States or the Civil Rights Act of 1866, the Civil Rights Act of 1871, or the Fair Housing Act of 1968, and this Court has no jurisdiction of this cause under the provisions of Title 28 of the United States Code.

3. That the allegations of the complaint fail to set forth facts showing any dollar amount in controversy. The allegation that the amount in controversy exceeds $10,000.00 is the conclusion of the pleader. Said complaint fails to set forth the terms of the purported contract and fails to attach thereto the purported contract under which the plaintiff, Metropolitan Housing Development Corporation, alleges an interest in the property in question.

4. The plaintiffs, Isaac Greenwood, Arthur Guthrie and Willie Ransom, have no justiciable interest in the matters in controversy for the reason that they do not own the subject property nor are facts alleged in the complaint showing wherein they are entitled to the use or occupancy of said property. That the allegations of the complaint with respect to plaintiffs, Isaac Greenwood, Arthur Guthrie and Willie Ransom, are insufficient to render them a class under Rules 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure. That the Metropolitan Housing Development Corporation, an Illinois not-for-profit corporation, is at best a contract purchaser or lessee upon a condition and as such has no standing to attack the validity of

the Arlington Heights Zoning Ordinance as applied to the subject property. That the Clerics of St. Viator, the admitted owner in fee of the subject property, is a necessary party to this case and the cause should be dismissed unless it is a party plaintiff. That the interest of the Metropolitan Housing Development Corporation is supposedly a 99-year lease and agreement to sell, but there are no allegations in the complaint showing that Metropolitan Housing Development Corporation is entitled to the use and possession of the subject property.

5. That the allegations of the complaint fail to show wherein the proposed development will specifically provide for housing for minority group members or serve the purported class represented by the individual plaintiffs herein.

6. That the zoning ordinance of the Village of Arlington Heights is neutral on its face and in no way discriminates against any persons because of race, religion or national origin, and said ordinance is not in fact aimed at any racial minority.

7. That the allegations that the individual plaintiffs have been unable to find housing at a price they could afford in the vicinity of their jobs is insufficient to show that the action of the Village of Arlington Heights, in refusing to rezone the subject property, constitutes discrimination against the individual plaintiffs and fails to give rise to a claim under the Federal Civil Rights Act or the Federal Constitution.

8. That the zoning ordinance of the Village of Arlington Heights was adopted pursuant to the specific authority granted to said Village under the provisions of Sections 11-13-1, et seq. of Chapter 24 of the Illinois Revised Statutes and said zoning ordinance is in all respects and specifically as applied to the subject property, a valid exercise of the legislative discretion granted to the Village of Arlington Heights by the laws of the State of Illinois. That said zoning ordinance is a law which is neutral on its face and is not aimed at any racial minority or economic group. That the various civil rights statutes and the

Fourteenth Amendment to the Constitution of the United States are not intended to be utilized to destroy the valid police power of municipal corporations and there are no allegations in said complaint which show that the classification of the subject property as single-family property under the zoning ordinance of the Village of Arlington Heights since 1959 and prior thereto has any relation to the racial characteristics of any citizens of the Village of Arlington Heights or the County of Cook or the State of Illinois. That Metropolitan Housing Development Corporation is not a person which has been discriminated against by reason of race within the meaning of the Civil Rights Act and is not entitled to bring this action under the civil rights statutes. That there are no allegations showing that the civil rights or constitutional rights of any of the plaintiffs have been violated by the classification of said property for single-family purposes.

9. That the zoning ordinance of the Village of Arlington Heights does not involve any classification based upon race or any discrimination between persons, but is solely a method of regulating the use of land in accordance with the statutes of the State of Illinois.

10. That the complaint fails to state facts showing wherein the subject property cannot be used for low-income housing, except for the possible desire of the owner of the property to maximize the profit to be derived from the sale of the land by utilizing said land at a greater density than that permitted under the valid zoning ordinance of the Village of Arlington Heights. That the failure of a property owner or a contract purchaser to derive the maximum amount of money from the sale of land does not give standing under the various provisions of the Civil Rights Acts or the Fourteenth Amendment to the Constitution of the United States.

11. That the complaint is substantially insufficient as a matter of law in that it fails to state a cause of action within the jurisdiction of this Court or under the various statutes cited.

12. That as appears on the face of said complaint, this case merely involves an attack on the validity of the zoning ordinance of the Village of Arlington Heights as applied to a specific piece of property within the corporate limits of the Village. As such, it raises no substantial federal questions and the proper forum for its trial is in the state courts of Illinois.

13. That this case is a proper one for the adoption by this Court of the abstention doctrine.

WHEREFORE, it is respectfully prayed that the complaint heretofore filed herein be stricken and the cause dismissed.

VILLAGE OF ARLINGTON HEIGHTS, RALPH CLARBOUR, ALICE HARMS, FRANK PALMATIER, JAMES RYAN, THEODORE SALINSKY, DWIGHT WALTON, JOHN WOODS, L. A. HANSON, and MARTIN MUNSEN,

Defendants.

By /s/ JACK M. SIEGEL,

Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

MOTION OF NORTHWEST OPPORTUNITY CENTER, INC. AND ELUTERIA D. MALDONADO FOR LEAVE TO INTERVENE AS PARTY PLAINTIFFS.

Pursuant to Rule 24(b)(2) of the Federal Rules of Civil Procedure, Northwest Opportunity Center, Inc. ("NOC") and Eluteria D. Maldonado, by their attorneys, hereby move for leave to intervene as Plaintiffs in this action in order to support the matters and claims set forth in the complaint filed by the original Plaintiffs herein and to assert the matters and claims set forth in their own pleading, a copy of which is attached hereto. In support of this motion, NOC and Eluteria D. Maldonado state as follows:

I. NOC is a not-for-profit corporation organized under the laws of the State of Illinois with offices at 3411 North Kirchoff Road, Rolling Meadows, Illinois 60008. NOC was originally formed in 1967 for the purpose of reducing the effects and causes of poverty in the Northwest Cook County suburbs of Chicago, Illinois, in order that low and moderate income residents might better seek to become fully self-sufficient, and to this end, NOC has sought to increase the availability of, and to locate for its members, decent low and moderate income housing in Arlington Heights and other northwest suburbs.

II. Eluteria D. Maldonado is a citizen of the United States of Mexican descent who resides in Cook County, Illinois and works in Arlington Heights.

III. Eluteria D. Maldonado and many of NOC's members and other persons whom NOC is designed to serve are low and

moderate income residents of Chicago's northwest suburbs who work or desire to work in Arlington Heights but who cannot find decent housing in Arlington Heights at rents they can afford and who have been injured by the discriminatory housing and zoning practices of Arlington Heights as alleged in the original complaint herein.

IV. Since a substantial and disproportionate number of the low and moderate income residents of the area served by NOC are Spanish-speaking or Spanish-surnamed people, NOC has become particularly aware of and concerned with the lack of adequate housing opportunities available to these people in Arlington Heights. NOC's membership is primarily made up of low and moderate income Spanish-speaking or Spanish-surnamed people and the one-third of its Board that is required to be elected from this membership is also primarily Spanish-speaking or Spanish-surnamed. Eluteria D. Maldonado and NOC note that the three individually-named Plaintiffs in this action are all Black persons and that no Spanish-speaking or Spanish-surnamed persons are presently before the court in this action. Eluteria D. Maldonado and NOC seek to intervene as Plaintiffs herein both to support the original Plaintiffs in their efforts to increase the number of low and moderate income housing units available on a non-discriminatory basis in Arlington Heights and to help secure and vindicate the Constitutional and statutory rights of Eluteria D. Maldonado, NOC's members, and those persons NOC is designed to serve regardless of race or nationality against the discriminatory housing and zoning practices of Arlington Heights.

V. The pleading of Intervening Plaintiffs Eluteria D. Maldonado and NOC, attached hereto, adopts by reference the material allegations and prayer for relief set forth in the complaint of the original Plaintiffs herein. Intervening Plaintiffs' interests and claims and the main action, therefore, involve substantially the same questions of law and fact.

VI. The original Plaintiffs have authorized Eluteria D. Maldonado and NOC to state that they have no objection to the intervention of Eluteria D. Maldonado and NOC. Intervening Plaintiffs' attorneys in this action will be the same as those representing the original Plaintiffs herein. As noted in paragraph V, above, Intervening Plaintiffs' interests and claims and the main action involve substantially the same questions of law and fact. Intervention by Eluteria D. Maldonado and NOC as Plaintiffs herein will, therefore, not unduly delay nor prejudice the adjudication of the rights of the original parties.

Respectfully submitted,

F. WILLIS CARUSO,
WILLIAM J. MCNALLY,
GERALD MULLER,
CAROL M. PETERSEN,
ROBERT SCHWEMM,
Attorneys for Eluteria D. Maldonado and Northwest Opportunity Center, Inc.

By /s/ ROBERT SCHWEMM.

Dated: September 8, 1972.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

COMPLAINT OF INTERVENING PLAINTIFFS NORTHWEST OPPORTUNITY CENTER, INC. AND ELUTERIA D. MALDONADO.

Now come Northwest Opportunity Center, Inc. ("NOC"), a not-for-profit corporation of Illinois, and Eluteria D. Maldonado, by their attorneys, pursuant to the motion for leave to intervene as parties Plaintiff, and state their claim to be as follows:

I. *Nature of Action.*

1. The matters contained in Paragraph 1 of the Complaint of original Plaintiffs are hereby adopted by reference as if herein set forth in full.

2. Intervening Plaintiff Eluteria D. Maldonado is a citizen of the United States of Mexican descent, who resides in Cook County, Illinois. Intervening Plaintiff NOC is a not-for-profit community organization organized under the laws of the State of Illinois whose purposes include increasing the availability of low and moderate income housing in Arlington Heights for its members and other low and moderate income persons whom NOC is organized to serve. Intervening Plaintiffs Maldonado and NOC allege that the refusal of the Village of Arlington Heights to rezone the subject property violates the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), the Fair Housing Act of 1968 (42 U. S. C. §§ 3601 *et seq.*), and Article I, section 2 of the Illinois Constitution and 24 Ill. Rev. Stat. § 11-13 *et seq.*

3. The matters contained in Paragraph 3 of the Complaint of original Plaintiffs in this action are hereby adopted by reference as if herein set forth in full.

II. *Jurisdiction.*

4.-6. The matters contained in Paragraphs 4, 5, and 6, respectively, of the Complaint of original Plaintiffs in this action are hereby adopted by reference as if herein set forth in full.

III. *Intervening Parties Plaintiff.*

7. Eluteria D. Maldonado is a citizen of the United States of Mexican descent. Both of her parents were born in Mexico, and she speaks both English and Spanish. She is the principal source of support for her husband and four children, and she and her family live in a house in an unincorporated area of Cook County near Arlington Heights, Illinois. Her house is in a general state of disrepair and is totally inadequate for her family's needs, but it is convenient to her work at Dana Molded Products in Arlington Heights. Mrs. Maldonado has been looking for, but has been unable to find, decent housing at a price her family could afford in the vicinity of her job. She and her family seek, and are eligible for, housing of the type Plaintiff MHDC seek to build in Arlington Heights. Mrs. Maldonado is a member of the class on behalf of whom original plaintiffs Greenwood, Guthrie, and Ransom have sued (see Original Complaint, p. 7), and she brings this action under Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedures on her own behalf and on behalf of all others similarly situated; namely, Chicago area low and moderate income minority-group members (including Spanish-speaking and Spanish-surnamed persons) who work or desire to work in Arlington Heights but cannot find decent housing in Arlington Heights at rents they can afford.

8. NOC is a not-for-profit corporation organized under the laws of the State of Illinois with offices at 3411 North Kirchoff Road, Rolling Meadows, Illinois 60008. NOC was originally formed in 1967 for the purpose of reducing the effects and causes of poverty in the Northwest Cook County suburbs of Chicago, Illinois, in order that low and moderate income residents might better seek to become fully self-sufficient, and to this end, NOC has sought to increase the availability of, and to locate for its members and other persons it is serving, decent low and moderate income housing in Arlington Heights and other Northwest suburbs. Many of NOC's members and other persons whom NOC is designed to serve are low and moderate income residents of Chicago's Northwest suburbs who work or desire to work in Arlington Heights and are qualified for and seek housing of the type proposed to be built, but who cannot presently find decent housing in Arlington Heights at rents they can afford to pay. A substantial and disproportionate number of the low and moderate income residents of the area served by NOC are Spanish-speaking or Spanish-surnamed people. NOC's members and those persons NOC is designed to serve include a substantial number of low and moderate income Spanish-speaking or Spanish-surnamed people. The one-third of NOC's Board that is required to be elected from this membership is primarily Spanish-speaking or Spanish-surnamed. NOC, therefore, is particularly aware of and concerned with the lack of adequate housing opportunities available to low and moderate income Spanish-speaking or Spanish-surnamed people on a non-discriminatory basis in Arlington Heights.

IV. *Parties Defendant.*

9.-13. The matters contained in Paragraphs 9, 10, 11, 12, and 13, respectively, of the Complaint of original Plaintiffs are hereby adopted by reference as if herein in set forth in full.

V. *Events Leading to the Filing of This Lawsuit.*

14.29. The matters contained in Paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29, respectively, of the Complaint of original Plaintiffs are hereby adopted by reference as if herein set forth in full.

VI. *The Civil Rights Context.*

30.-38. The matters contained in Paragraphs 30, 31, 32, 33, 34, 35, 36, 37, and 38, respectively, of the Complaint of original Plaintiffs are hereby adopted by reference as if herein set forth in full. Any reference made in these Paragraphs to "racial discrimination" or like phrases shall be understood to include discrimination based on national origin. Any reference made in these paragraphs to "minorities", "minority groups", "minority group members", minority group employees", or like phrases shall be understood to include Spanish-speaking and Spanish-surnamed persons.

VII. *The Zoning Context.*

39.-45. The matters contained in Paragraphs 39, 40, 41, 42, 43, 44, and 45, respectively, of the Complaint of original Plaintiffs are hereby adopted by reference as if herein set forth in full.

COUNT I.

46. Defendant Village and Defendant Trustees, in refusing to rezone the subject property from R3 to R5, have discriminated against Intervening Plaintiff Maldonado and the class she represents, have infringed upon the fundamental interests of Intervening Plaintiff NOC, and have discriminated against NOC's members and those it is serving as well as the original individual Plaintiffs and the class they represent by perpetuating national-origin and racial segregation in housing. In so doing, said

Defendants have denied NOC's members and those it is serving as well as Intervening Plaintiff Maldonado and the class she and the Original Plaintiffs represent integrated housing opportunities and an opportunity to share in the environmental benefits of land-use planning, while extending those opportunities to wealthier whites and persons of different, national origins who desire to live in Arlington Heights. Defendant Village and Defendant Trustees have violated the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), and the Fair Housing Act of 1968 (42 U. S. C. § 3601 *et seq.*) and Article I, section 2 of the Illinois Constitution. In addition, such action, which results in the exclusion of national-origin and racial minorities from the Village, is not in the general welfare, thereby violating the Illinois Zoning Enabling Act, 24 Ill. Rev. Stat. § 11-13 *et seq.*, and is beyond the police power of the state, thereby violating the due process clauses of the Fourteenth Amendment of the United States Constitution and of Article I, section 2 of the Illinois Constitution.

WHEREFORE, Intervening Plaintiffs Maldonado and NOC pray that the Court:

1. Expedite this cause in every way and hear it at the earliest possible date.

2. Issue a judgment declaring that the denial of Plaintiff MHDC's petition by the Village and the Trustees is unconstitutional, that the zoning ordinance of the Village of Arlington Heights is arbitrary, unreasonable, capricious, and unconstitutional in its application to the subject property, and the proposed use is a reasonable use of the subject property.

3. Enjoin all Defendants from enforcing any zoning ordinance or other restriction as to the subject property which would prohibit the proposed development and from refusing to take any affirmative steps necessary for Plaintiff MHDC to begin and complete construction.

4. Retain jurisdiction over this action until the completion of development.

5. Allow the Plaintiffs, including Intervening Plaintiffs Maldonado and NOC, costs herein and any such other relief as the Court finds just and proper.

Respectfully submitted,

F. WILLIS CARUSO,
WILLIAM J. MCNALLY,
GERALD MULLER,
CAROL M. PETERSEN,
ROBERT SCHWEMM,
Attorneys for Eluteria D. Maldonado and Northwest Opportunity Center, Inc.

By: /s/ ROBERT SCHWEMM.

Dated: September 8, 1972

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable William J. Lynch.

Cause No. 72 C 1453 Date October 3, 1972

Title of Cause—Metropolitan Housing Development Corporation, et al. v. The Village of Arlington Heights, et al.

Brief Statement of Motion—Motion to Strike Complaint and Dismiss Cause.

ORDER: Defendant's motion to strike the complaint and dismiss the cause is denied. A complaint which is the subject of a motion to dismiss should be construed in the light most favorable to the plaintiff with all doubts resolved in the plaintiff's favor. *Jung* v. *K & D Mining Co.*, 260 F. 2nd 607 (7th Cir., 1958). Further, all well-pleaded material allegations of the complaint are, for the purpose of the motion, assumed to be true. In light of the above standards, the Court finds that the complaint states a cause of action upon which relief may be granted. See, *Sisters of Providence of St. Mary's of the Woods* v. *City of Evanston,* 335 F. Supp. 396 (N. D., Ill., 1971).

Defendants are given ten days to answer or otherwise plead.

W. J. L.

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable William J. Lynch.

Cause No. 72 C 1453 Date October 4, 1972

Title of Cause—Metropolitan Housing Development Corporation, et al. v. The Village of Arlington Heights, et al.

Brief Statement of Motion—Motion to Intervene.

ORDER: Motion of Northwest Opportunity Center, Inc. and Eluteria D. Maldonado for leave to intervene as party plaintiffs pursuant to Rule 24(b)(2), Fed. R. Civ. P. is granted.

Order cause set for status report on October 27, 1972 at 10:00 a.m.

W. J. L.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted In Printing.]

ANSWER TO COMPLAINT.

Now come the Village of Arlington Heights, a municipal corporation, Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan, Theodore Salinsky and Dwight Walton, in their official capacity as Trustees of the Village of Arlington Heights, John Woods, in his official capacity as Mayor of the Village of Arlington Heights, L. A. Hanson, in his official capacity as Village Manager of the Village of Arlington Heights, and Martin Munson, in his official capacity as Director of Building and Zoning of the Village of Arlington Heights, defendants herein, by Jack M. Siegel, their attorney, and in answer to the complaint heretofore filed herein, say as follows:

I. *Nature of Action.*

1. In answer to paragraph 1 of said complaint, defendants admit that this is a suburban zoning case in which some of the plaintiffs allege that their civil rights have been violated and others allege that their property rights as guaranteed by the Constitutions of the United States and the State of Illinois have been violated. Defendants deny that the civil rights of any of these plaintiffs have been violated by the Village of Arlington Heights and deny that the property rights guaranteed by the Constitutions of the United States and the State of Illinois have been violated. Defendants admit that the Village Board of Trustees of the Village of Arlington Heights has refused to rezone the subject property, but deny that the reason the Village Board of Trustees refused to rezone the property was because of the proposed construction of a housing development which would

contain federally assisted low and moderate income housing units. Defendants aver that the sole and only reason for the refusal to rezone the subject property for multiple-family purposes was because such zoning would be out of character with the existing land use and zoning of nearby properties, would depreciate surrounding property values, and would be detrimental to the public health, safety and welfare of the citizens of the Village of Arlington Heights. Defendants further aver that the refusal to rezone said property was motivated solely for the purpose of preserving property values within the Village of Arlington Heights and promoting the sound development of said Village, and said action was totally unrelated to the civil rights or the alleged interests of the individual plaintiffs in this action.

2. In answer to paragraph 2 of said complaint, defendants say that they have no knowledge sufficient to form a belief that the plaintiffs are black persons who presently work in Arlington Heights and cannot find decent housing in Arlington Heights at a price they can afford to pay, and further aver they have no knowledge sufficient to form a belief that the plaintiffs qualify for and seek housing of the type proposed to be built. Defendants demand strict proof of said allegations and further aver that said allegations, even if true, are insufficient to give the individual named plaintiffs standing to bring this action. Defendants further aver that they have no knowledge sufficient to form a belief that a plaintiff is an obligor under a contract to purchase the property and demand strict proof thereof. Defendants deny that the refusal of the Village of Arlington Heights to rezone the subject property violates the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), the Fair Housing Act of 1968 (42 U. S. C. §§ 3601 et seq.) and Article I, Section 2 of the Illinois Constitution, and 24 Ill. Rev. Stat. § 11-13 et seq. Defendants aver that the refusal of the Village of Arlington

Heights to rezone the subject property is in all respects a valid legislative determination and is reasonably related to the public health, safety, morals and welfare of the citizens of the Village of Arlington Heights and is a proper exercise of legislative discretion vested in the President and Board of Trustees of the Village of Arlington Heights under the Constitution and Statutes of the State of Illinois. Defendants deny that the action by the Village of Arlington Heights violates the contract obligor's right to use property in which it has an interest in a reasonable fashion without unreasonable, arbitrary and capricious regulations by the State and aver that the allegations of said complaint fail to set forth facts showing the extent of the interest of the purported contract obligor. Defendants further aver that the owner of the property is a necessary party to this action and the contract obligor has no standing to bring this action to challenge the validity of the zoning ordinance of the Village of Arlington Heights. Defendants further aver that the contract obligor has no standing to bring this action under any Civil Rights Act or the Fair Housing Act of 1968, nor does it have any standing to bring this action before the Federal Courts.

3. In answer to paragraph 3 of said complaint, defendants deny that this Court has jurisdiction to enter a declaratory judgment invalidating the zoning ordinance as applied to the subject property and an injunction restraining the defendants from interfering with the development, and further say that the individual plaintiffs herein have failed to exhaust their local or administrative remedies as required by the laws of the State of Illinois. Defendants further aver that the plaintiffs have an adequate forum to redress their grievances in the State Courts of Illinois.

II. *Jurisdiction.*

4. In answer to paragraph 4 of said complaint, defendants deny that this Court has jurisdiction pursuant to 28 U. S. C. § 1331 and to 28 U. S. C. § 1343(3) and (4) in conjunction

with the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982) and the Civil Rights Act of 1871 (42 U. S. C. § 1983), and the Fair Housing Act of 1968 (42 U. S. C. §§ 3601, et seq.) Defendants deny that the amount in controversy, exclusive of interests and costs, exceeds $10,000.

5. In answer to paragraph 5 of said complaint, defendants deny that declaratory relief is proper under 28 U. S. C. §§ 2201 and 2202, and deny that this Court has jurisdiction under said sections.

6. In answer to paragraph 6 of said complaint, defendants deny that any claims arise in whole or in part under the Constitution or Statutes of the State of Illinois and deny that the plaintiffs have the right to invoke the pendent jurisdiction of this Court.

III. *Parties Plaintiff.*

7. In answer to paragraph 7 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further say that said allegations, even if true, are irrelevant and immaterial to the issues in this case.

8. In answer to paragraph 8 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. More particularly:

a. With respect to Isaac Greenwood, defendants say they have no knowledge sufficient to form a belief as to any of the allegations contained with respect to Mr. Greenwood and demand strict proof of said allegations. Defendants further aver that said allegations, if true, fail to give Mr. Greenwood standing to bring this action, and further aver that Mr. Greenwood has failed to exhaust his administrative remedies as required

under the laws of the State of Illinois. Defendants further aver that said allegations fail to set forth facts, but are merely the unsupported allegations of the pleader.

b. With respect to Arthur Guthrie, defendants say they have no knowledge sufficient to form a belief as to any of the allegations contained with respect to Mr. Guthrie and demand strict proof of said allegations. Defendants further aver that said allegations, if true, fail to give Mr. Guthrie standing to bring this action, and further aver that Mr. Guthrie has failed to exhaust his administrative remedies as required under the laws of the State of Illinois. Defendants further aver that said allegations fail to set forth facts, but are merely the unsupported allegations of the pleader.

c. With respect to Willie Ransom, defendants say they have no knowledge sufficient to form a belief as to any of the allegations contained with respect to Mr. Ransom and demand strict proof of said allegations. Defendants further aver that said allegations, if true, fail to give Mr. Ransom standing to bring this action, and further aver that Mr. Ransom has failed to exhaust his administrative remedies as required under the laws of the State of Illinois. Defendants further aver that said allegations fail to set forth facts, but are merely the unsupported allegations of the pleader.

Defendants further aver that plaintiffs Greenwood, Guthrie and Ransom are not entitled to bring this action under Rule 23(a) and 23(b)(2) and (3) of the Federal Rules of Civil Procedure. Defendants aver that the plaintiffs are not members of an ascertainable class and that each and every person who purports to be a member of a low and moderate income minority group may be differently situated with respect to eligibility for housing as proposed by the Metropolitan Housing Development Corporation, and this suit is not a proper one for a class action for the reason that the allegations of the complaint fail to set forth facts showing that the individual plaintiffs are in fact a member of any ascertainable class. Defendants deny that they

have acted or refused to act on grounds generally applicable to any class, but say their refusal to grant the rezoning requested was not related to any class of persons but was simply the exercise of legislative discretion specifically delegated to the Village of Arlington Heights by the Statutes of the State of Illinois. Defendants further deny that there are questions of law and fact common to a class and deny that a class action is superior to other available methods for the fair and efficient adjudication of this suit.

IV. *Parties Defendant.*

9.-13. Defendants admit the allegations of paragraphs 9, 10, 11, 12 and 13 of said complaint, but aver that John Woods was not the Mayor of the Village of Arlington Heights during the events complained of herein. Defendants further aver that L. A. Hanson, as Village Manager, has no legislative authority and that the acts complained of herein were acts of the President and Board of Trustees of the Village of Arlington Heights, in which L. A. Hanson played no part. Defendants further aver that Martin Munsen, as Director of Building and Zoning, is purely a ministerial officer and is bound by the ordinances of the Village of Arlington Heights and in no way participated in any of the events complained of herein.

V. *Events Leading to the Filing of This Lawsuit.*

14. In answer to paragraph 14 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further say that if the Clerics of St. Viator is the owner in fee of the subject property described in the complaint, then the Clerics of St. Viator is a necessary party to this lawsuit and this suit may not proceed unless or until the Clerics of St. Viator becomes a party plaintiff herein, and this suit should be dismissed for failure to include necessary parties.

15. In answer to paragraph 15 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further state that any agreement for a 99-year lease or for sale of property must be reduced to writing under the laws of the State of Illinois and that said agreement, if such exists, should be pleaded and made an exhibit to said complaint.

16. In answer to paragraph 16 of said complaint, defendants admit that the property legally described is located abutting the Viatorian property, but deny that there is a heavily travelled road to the south. Defendants aver that to the south lies Euclid Avenue, a single-family residential street in that area of Arlington Heights. Defendants further deny that the Viatorian property includes a three-story hotel-like structure, but say that the entire tract, of which the subject property is a portion, is zoned for R-3 One-Family Dwelling District and that under this classification detached dwellings, churches, convents, monasteries, rectories, parish houses and horticultural uses are permitted. That said 80-acre tract is improved with a boys high school, recreation fields and a nursery. That the areas to the north, south, east and west of the entire tract are zoned and developed under the R-3 One-Family Dwelling classification of the Arlington Heights Zoning Ordinance.

17. In answer to paragraph 17 of said complaint, defendants admit the allegations therein contained.

18. In answer to paragraph 18 of said complaint, defendants admit that an application for rezoning to permit a planned unit development of the type proposed was made to the Village of Arlington Heights, but say they have no knowledge sufficient to form a belief as to the truth of the allegations with respect to the present intention of the corporate plaintiff and neither admit nor deny the allegations therein contained. Defendants further aver they have no knowledge as to whether or not the subsidies

are available for the proposed project under § 236 of the National Housing Act of 1968, or who would occupy said development, and demand strict proof of the allegations with respect to these facts.

19. In answer to paragraph 19 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further aver that whether or not the proposed development meets the requirements of Section 236 of the National Housing Act or what the rental schedule or racial composition of the project will be is totally irrelevant and immaterial to the questions as to the validity of the action of the defendants herein.

20. In answer to paragraph 20 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof Defendants further aver that any expenditures by MHDC for developing its proposal and preparing for hearing were the voluntary expenditures of MHDC and are totally irrelevant and immaterial to any of the issues in this case.

21. In answer to paragraph 21 of said complaint, defendants admit that MHDC petitioned the Village for rezoning for a change from the R-3 to the R-5 zoning classification and a planned development, but deny that said proposed development meets all the requirements of the R-5 zoning classification and the requirements of all other Village codes.

22. In answer to paragraph 22 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further aver that any conversations with staff persons could have no binding effect on the defendants herein. Defendants further aver that staff persons are available to all applicants for

any zoning changes for the purpose of answering questions or advising on procedures, but that such conferences or changes in plans as may have been made are totally irrelevant to any of the issues in this case.

23. In answer to paragraph 23 of said complaint, defendants admit the allegations therein contained.

24. In answer to paragraph 24 of said complaint, defendants aver that the allegations therein contained are totally irrelevant and immaterial to any of the issues in this cause and further state that this action is not an attempt to review the actions of the Plan Commission of the Village of Arlington Heights nor is the Plan Commission a party to this proceeding. Defendants aver that the only question in this action, aside from the question of jurisdiction of the Federal Court, is the question of whether or not the legislative action of the President and Board of Trustees was a reasonable exercise of the legislative discretion vested in the President and Board of Trustees under the Statutes and Constitution of the State of Illinois.

25. In answer to paragraph 25 of said complaint, defendants aver that the allegations therein contained are irrelevant and immaterial to any of the issues in this cause and say that this action is not one to review the proceedings of the Plan Commission, but that the only question raised in this proceeding, aside from the jurisdiction of the Federal Court, is that of the reasonableness of the legislative determination made by the President and Board of Trustees of the defendant, Village of Arlington Heights.

26.-27. In answer to the allegations of paragraphs 26 and 27 of said complaint, defendants admit that the Plan Commission voted 7 to 2 to recommend to the Village Board that it reject MHDC's rezoning petition and admit that on September 28, 1971, the Village Board of Trustees denied MHDC's rezoning petition.

28. In answer to paragraph 28 of said complaint, defendants say they have no knowledge sufficient to form a belief as

to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further aver that the question of whether MHDC found other sites which it deemed appropriate has no relevance to any of the issues in this cause. Defendants further aver that whether land can be purchased at a price within the maximum allowable land cost for a Section 236 development has no relevance to any of the issues in this cause.

29. In answer to paragraph 29 of said complaint, defendants admit that the Village Board of Trustees on March 27, 1972 approved a certain report of the Joint Study Committee. Defendants deny that the proposed development conforms with the principles governing the planning for low and moderate income housing contained in the above Report. Defendants further aver that, by ordinance number 72-43, adopted May 15, 1972, the Arlington Heights Local Housing Commission was established for the purpose of implementing and carrying forward said Report of March 27, 1972.

VI. *The Civil Rights Context.*

30. In answer to paragraph 30 of said complaint, defendants deny that the failure of the Village of Arlington Heights to rezone the subject property was racially discriminatory and deny each and every allegation of said paragraph 30. Defendants aver that the denial of rezoning was absolutely unrelated to any racial considerations, but was based solely upon sound zoning and land planning considerations and was a reasonable exercise of the legislative discretion vested in the President and Board of Trustees by the Statutes and Constitution of the State of Illinois.

31. In answer to paragraph 31 of said complaint, defendants admit the allegations therein contained, except to say they have no knowledge sufficient to form a belief as to the number of black persons residing in Arlington Heights. Defendants

aver that they make no head count based upon race. Defendants further aver that under ordinance number 68-1, adopted January 2, 1968, commonly known as Article XVIIA Real Estate Brokers of the Municipal Code of Arlington Heights, there has been established a real estate brokers review board. That said Article XVIIA of the Municipal Code of Arlington Heights is a "Fair Housing Ordinance" that makes it unlawful to discriminate in the sale or rental of real estate because of the race, color, religion, national origin or ancestry of applicants for sale or lease of real estate. That the Village of Arlington Heights has consistently adopted a public policy against any and all discrimination in real estate transactions because of race, color, religion or national origin. That discrimination in the sale or lease of real estate because of race, color, religion or national origin can result in the suspension of a real estate broker's license by the Village of Arlington Heights.

32. In answer to paragraph 32 of said complaint, defendants admit the existence of Centex Industrial Park in the vicinity of Arlington Heights, but aver that said Centex Industrial Park is located in Elk Grove Village and taxes from said development or any other benefits from said development do not accrue to the Village of Arlington Heights. Defendants further aver that the existence of Centex Industrial Park in the Village of Elk Grove Village has no relationship to any of the issues in this cause. Defendants admit that there are industries in the Village of Arlington Heights, including Honeywell, Inc. Defendants further aver that they have no knowledge as to the number of minority group employees employed by industries within the Village of Arlington Heights and neither admit nor deny the allegations that industries in Arlington Heights employ substantial numbers of minority group employees, but demand strict proof thereof. Defendants further aver that the existence of Centex Industrial Park and Honeywell, Inc. has nothing to do with any of the issues in this case.

33. In answer to paragraph 33 of said complaint, defendants deny that minority group employees have been unable to find decent housing in Arlington Heights and further aver they have no knowledge sufficient to form a belief as to the commuting distances of any employees who work in Arlington Heights and demand strict proof of said allegations. Defendants deny that any workers subsidize residents of the Village of Arlington Heights. Defendants deny that the Village does not permit housing for any workers, but say that the Village permits any housing which meets the zoning and building codes of the Village of Arlington Heights and does not in any way discriminate against any persons with respect to the occupancy of housing.

34. In answer to paragraph 34 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further aver that they have no control or interest in the Centex Industrial Park which is located in a different municipality far removed from the subject property of this lawsuit and further aver that the Village has no control over the expense of commuting and further aver that the Village does not discourage any persons from seeking employment in the Village of Arlington Heights.

35. In answer to paragraph 25 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants specifically deny however that they have in any way prevented minority group members who work or desire to work in Arlington Heights from working in Arlington Heights. Defendants further aver that they have no control over areas where the loss of tax base has meant deterioration of schools and municipal services and further aver that the allegations of paragraph 35 are merely the unsupported conclusions of the

pleader and are irrelevant and immaterial to the issues in this case.

36. In answer to paragraph 36 of said complaint, defendants deny that there is a desperate need for decent housing for those who work or desire to work in Arlington Heights but cannot afford the housing presently available in the Village. Defendants further state that the report of the Joint Study Committee speaks for itself and further aver that the proposed development of the plaintiff herein will not meet any need indicated in the Joint Study Committee Report.

37. In answer to paragraph 37 of said complaint, defendants deny that its zoning for single-family houses is in any way related to the ability of any group to pay for housing. Defendants further aver that they have no control over the cost of land or the cost of construction and deny that any acts of the Village have resulted in the prevention of low or moderate income housing in Arlington Heights. Defendants further aver that if the cost of land prevents MHDC from developing the subject property for low or moderate income housing, the reason for said cost of land is solely the price set on said land by the owners of said property and not by any acts of the defendants.

38. In answer to paragraph 38 of said complaint, defendants deny each and every allegation therein contained. Defendants deny that poor persons have been zoned out of Arlington Heights and aver that any zoning changes adopted by the Village have been undertaken only where land use considerations and sound planning principles have dictated such rezoning. Defendants further aver that their zoning policies have been solely for the purpose of implementing sound planning and proper development within the Village of Arlington Heights and have not been directed toward any group of persons and have not been motivated by any economic or racial considerations.

VII. *The Zoning Context.*

39. In answer to paragraph 39 of said complaint, defendants deny that the proposed rezoning is consistent with the Village's policies and practice and is a reasonable use of the subject property. Defendants deny there are no compelling zoning and planning reasons for denying the rezoning application and aver that said application was denied for the purpose of protecting and preserving the public health, safety and welfare and said denial was based upon sound zoning and planning considerations, including the character of the surrounding area, the traffic and street patterns in the area, the suitability of the subject property for development as presently zoned and the preservation and enhancement of existing property values and tax base.

40. In answer to paragraph 40 of said complaint, defendants deny each and every allegation therein contained. Defendants further aver that each zoning matter must be considered on its own facts and that the Village has never rezoned property similarly situated to that of the subject property for R-5 purposes.

41. In answer to paragraph 41 of said complaint, defendants deny the allegations therein contained.

42. In answer to paragraph 42 of said complaint, defendants deny that the proposed development is consistent with the Village's zoning policies and practice. Defendants deny that the apartment policy adopted May 4, 1970 is in any way applicable to the subject property, and deny each and every allegation of said paragraph 42.

43. In answer to paragraph 43 of said complaint, defendants deny that the proposed development would not adversely affect public facilities. Defendants deny that the impact of the proposed development on the capacity of schools would be less than the impact of 60 tract houses and deny that the impact on traffic will not be substantial. Defendants deny each and every allegation of paragraph 43.

44. In answer to paragraph 44 of said complaint, defendants deny each and every allegation of said paragraph and further state that the allegations of said paragraph, even if true, would be irrelevant and immaterial to the issues in this case.

45. In answer to paragraph 45 of said complaint, defendants deny that the proposed development will not adversely affect the character of the surrounding neighborhood and will not diminish property values. Defendants deny that the proposed development is aesthetically attractive and deny that the buildings in the proposed development will harmonize with nearby dwellings. Defendants aver that the property may be developed for single-family homes under the zoning ordinance of the Village of Arlington Heights and that there is a great demand for single-family homes. Defendants deny that the proposed development will retain a single-family atmosphere and deny that the Village has approved apartment projects adjacent to single-family neighborhoods which are garishly designed and inadequately buffered.

COUNT I.

46. In answer to paragraph 46 of said complaint, defendants deny each and every allegation therein contained and specifically deny that the refusal to rezone the subject property amounts to discrimination against the individual plaintiffs or any class they purport to represent. Defendants deny that said rezoning perpetuates racial segregation and deny that the refusal to rezone prevents any persons from living within the corporate limits of the Village of Arlington Heights if the owners of the property would be willing to sell the property at a price which would permit the development of housing which persons seeking to live within the Village could afford to pay. Defendants deny that the Village or the Trustees have violated the Fourteenth Amendment to the Constitution of the United States and deny that the Village and the Trustees violated the Civil Rights Act of 1866, the Civil Rights Act of 1871, the Fair Housing Act of

1968, and Article I, Section 2 of the Illinois Constitution. The Village denies that its action results in the exclusion of racial minorities from the Village and denies that its action is not in the general welfare. They further deny that said action violates the Illinois Zoning Enabling Act or is beyond the police power of the State and deny that the action violates the due process clauses of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution.

COUNT II.

47. In answer to paragraph 47 of said complaint defendants deny that they have in any manner violated the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution. Defendants deny that they have unreasonably, arbitrarily or capriciously denied the plaintiff MHDC of its right to use the property in which it has an interest and aver that MHDC is entitled to use property in which it has an interest as long as said use complies with the zoning ordinance and other applicable ordinances of the Village of Arlington Heights.

WHEREFORE, defendants respectfully pray that the complaint heretofore filed herein be dismissed and judgment entered in favor of the defendants.

THE VILLAGE OF ARLINGTON HEIGHTS, RALPH CLARBOUR, ALICE HARMS, FRANK PALMATIER, JAMES RYAN, THEODORE SALINSKY, and DWIGHT WALTON, JOHN WOODS, L. A. HANSON, and MARTIN MUNSEN,
Plaintiffs,

By /s/ JACK M. SIEGEL,
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing]

ANSWER TO COMPLAINT OF INTERVENING PLAINTIFFS.

Now come the Village of Arlington Heights, a municipal corporation, Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan, Theodore Salinsky and Dwight Walton, in their official capacity as Trustees of the Village of Arlington Heights, John Woods, in his official capacity as Mayor of the Village of Arlington Heights, L. A. Hanson, in his official capacity as Village Manager of the Village of Arlington Heights, and Martin Munson, in his official capacity as Director of Building and Zoning of the Village of Arlington Heights, defendants herein, by Jack M. Siegel, their attorney, and in answer to the complaint of intervening plaintiffs heretofore filed herein, say as follows:

I. *Nature of Action.*

1. In answer to paragraph 1 of said complaint, defendants hereby adopt by reference the matters contained in paragraph 1 of their original answer as if herein set forth in full.

2. In answer to paragraph 2 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations that Eluteria D. Maldonado is a citizen of the United States of Mexican descent who resides in Cook County, Illinois, and demand strict proof thereof. Defendants further aver that said allegations if true are irrelevant and immaterial to any issues in this cause. Defendants further admit that NOC is a not-for-profit organization, but deny that said NOC has for one of its purposes the increasing of the availability of low and moderate income housing in Arlington Heights for its members and other low and moderate income persons. Defendants further deny that NOC has any standing to bring this action or to intervene herein. Defendants further deny that the refusal of the Village of Arlington Heights to rezone the subject property violates the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1866, the Civil Rights Act of 1871, the Fair Housing Act of 1968, and Article 1, Section 2 of the Illinois Constitution, and 24 Ill. Rev. Stat. § 11-13, et seq. Defendants further aver that the intervenors have no standing to intervene herein and said complaint fails to show wherein they have any justiciable interest in this proceeding or any standing under the Civil Rights Acts as alleged.

3. In answer to paragraph 3 of said complaint, defendants hereby adopt by reference the matters contained in paragraph 3 of their original answer as if herein set forth in full.

II. *Jurisdiction.*

4.-6. In answer to paragraphs 4, 5 and 6 of said complaint, defendants hereby adopt by reference the matters contained in paragraphs 4, 5 and 6 of their original answer as if herein set forth in full.

III. *Intervening Parties Plaintiff.*

7. In answer to paragraph 7 of said complaint, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further deny that Mrs. Maldonado is a member of the class on behalf of whom the original plaintiffs, Greenwood, Guthrie and Ransom, have sued and deny that she is entitled to bring this action under Rule 23 as a class action. Defendants further deny that there is a class of Chicago area low and moderate income minority group members who work or desire to work in

Arlington Heights but cannot find decent housing in Arlington Heights at rents they can afford.

8. In answer to paragraph 8 of said complaint, defendants admit that NOC is a not-for-profit corporation. With respect to all the other allegations of said paragraph 8, defendants say they have no knowledge sufficient to form a belief as to the truth of the allegations therein contained and neither admit nor deny said allegations, but demand strict proof thereof. Defendants further aver that, even if true, such allegations are irrelevant and immaterial to the issues in this cause, and deny that NOC is a proper or necessary party to this proceeding and deny that it has standing to intervene herein.

V. *Parties Defendant.*

9.-13. In answer to paragraphs 9, 10, 11, 12 and 13 of said complaint, defendants hereby adopt by reference the matters contained in paragraphs 9, 10, 11, 12 and 13 of their original answer as if herein set forth in full.

V. *Events Leading to the Filing of This Lawsuit.*

14.-29. In answer to paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of said complaint, defendants hereby adopt by reference the matters contained in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of their original answer as if herein set forth in full.

V. *The Civil Rights Context.*

30.-38. In answer to paragraphs 30, 31, 32, 33, 34, 35, 36, 37 and 38 of said complaint, defendants hereby adopt by reference the matters contained in paragraphs 30, 31, 32, 33, 34, 35, 36, 37 and 38 of their original answer as if herein set forth in full. Defendants further aver that all answers relating to racial discrimination shall likewise be taken to refer to discrimination based on national origin, and all answers shall include, where appropriate, reference to Spanish-speaking and Spanish-surnamed persons. Defendants further aver that they have taken no action or performed any acts which in any way discriminate against any minority group members or against Spanish-speaking and Spanish-surnamed persons. Defendants further aver that the allegations of paragraphs 30, 31, 32, 33, 34, 35, 36, 37 and 38 fail to set forth facts showing wherein there has been any violation of the rights of the intervenor plaintiffs.

VII. *The Zoning Context.*

39.-45. In answer to paragraphs 39, 40, 41, 42, 43, 44 and 45 of said complaint, defendants hereby adopt by reference the matters contained in paragraphs 39, 40, 41, 42, 43, 44 and 45 of their original answer as if herein set forth in full.

COUNT I.

46. In answer to paragraph 46 of said complaint, defendants deny that in refusing to rezone the subject property from R-3 to R-5 they have discriminated against plaintiff Maldonado or any class, and deny that they have infringed upon the fundamental interests of intervening plaintiff NOC or have discriminated against NOC's members or any other class of persons. Defendants deny that in refusing to rezone the subject property they have perpetuated national origin and racial segregation in housing. Defendants deny each and every allegation of said paragraph 46 and specifically deny they have denied the plaintiffs integrated housing opportunities or the opportunity to share the environmental benefits of land use planning. Defendants deny they have violated the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866, the Civil Rights Act of 1871, the Fair Housing Act of 1968, and Article 1, Section 2 of the Illinois Constitution. Defendants

aver that in refusing to rezone the subject property they have acted within the scope of the legislative discretion vested in the President and Board of Trustees of the Village of Arlington Heights by the laws of the State of Illinois and, more particularly, 24 Ill. Rev. Stat. § 11-13, et seq. Defendants deny that such action results in the exclusion of national origin and racial minorities from the Village and deny that said action is beyond the police power of the state, and deny said action violates the due process clause of the Fourteenth Amendment of the United States Constitution and of Article 1, Section 2 of the Illinois Constitution.

47. As further and affirmative defenses, defendants say that the intervening complaint and the original complaint herein fail to set forth a cause of action giving jurisdiction to the Federal Courts and that the proper forum for said action, if any, is in the State Courts of Illinois. Defendants further aver that the plaintiffs herein have failed to exhaust their administrative remedies as required by the laws of the State of Illinois.

WHEREFORE, defendants respectfully pray that the complaint of the intervenor plaintiffs heretofore filed herein be dismissed and judgment entered in favor of the defendants.

THE VILLAGE OF ARLINGTON HEIGHTS,
RALPH CLARBOUR, ALICE HARMS,
FRANK PALMATIER, JAMES RYAN,
THEODORE SALINSKY, and DWIGHT
WALTON, JOHN WOODS, L. A. HANSON,
and MARTIN MUNSEN,
Plaintiffs.

By /s/ JACK M. SIEGEL,
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

IN THE UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted in Printing.]

MOTION TO RECONSIDER.

Now come the Village of Arlington Heights, a municipal corporation, Ralph Clarbour, Alice Harms, Frank Palmatier, James Ryan, Theodore Salinsky and Dwight Walton, in their official capacity as Trustees of the Village of Arlington Heights, John Woods, in his official capacity as Mayor of the Village of Arlington Heights, L. A. Hanson, in his official capacity as Village Manager of the Village of Arlington Heights, and Martin Munson, in his official capacity as Director of Building and Zoning of the Village of Arlington Heights, defendants herein, by Jack M. Siegel, their attorney, and move this Honorable Court to reconsider its order of October 3, 1972, wherein the defendants' motion to strike the complaint and dismiss the cause was denied. In support of said motion for reconsideration, the defendants say:

1. That the order of October 3, 1972 was based on the holding in *Sisters of Providence of St. Mary of the Woods* v. *City of Evanston*, 335 F. Supp. 396 (N. D. Ill. 1971), but the allegations of the complaint in the instant case are substantially different from those in the *Evanston* case and the complaint herein fails to state a cause of action under the Fourteenth Amendment of the Constitution of the United States or the Civil Rights Act of 1866, the Civil Rights Act of 1871, or the Fair Housing Act of 1968, and this Court has no jurisdiction of this cause under the provisions of Title 28 of the United States Code.

2. That the plaintiff, Metropolitan Housing Development Corporation's only firm interest in the property is a 99-year leasehold with a rental of $1.00 per year and there are no allegations in the complaint showing the jurisdictional amount. That a purported contract to purchase based upon rezoning is insufficient to give said Metropolitan Housing Development Corporation standing, absent the presence of the owners of the property as parties plaintiff.

3. That the allegations of the complaint with respect to plaintiffs, Isaac Greenwood, Arthur Guthrie and Willie Ransom, and intervenor-plaintiffs, Northwest Opportunity Center, Inc. and Eluteria D. Maldonado, are insufficient to show a justiciable interest under the Fourteenth Amendment for the reason that there is no racial discrimination charged, but the allegations of the complaint, taken most favorably as relating to the plaintiffs, merely indicate that the plaintiffs' failure to occupy housing in Arlington Heights is due solely to their alleged lack of economic ability to afford such housing. That the Civil Rights Acts, the Fair Housing Act, and the Fourteenth Amendment do not guarantee to all persons the right to live any place they wish regardless of economic ability.

4. That the zoning ordinance of the Village of Arlington Heights is neutral on its face and in no way discriminates against any persons because of race, religion or national origin, and said ordinance is not in fact aimed at any racial minority. That there are no allegations of fact in the complaint showing wherein the zoning ordinance of the Village of Arlington Heights or the particular action of the Village of Arlington Heights complained of herein are in any way directed toward the objective of racial discrimination.

5. That the allegations of said complaint, even taken most favorably to the plaintiffs, fail to set forth facts sufficient to overcome the presumption of validity attaching to the zoning ordinance of the Village of Arlington Heights.

6. That the Constitution of the State of Illinois, and particularly Article 1 thereof, guarantees to all persons the right of freedom from discrimination in the sale or rental of property, and further guarantees all persons equal protection of the laws. That the State Courts of Illinois are the proper forum for the determination of all issues in this cause.

7. The defendants further set forth as grounds for this motion, all the grounds heretofore set forth in their original Motion to Strike Complaint and Dismiss Cause heretofore filed herein.

WHEREFORE, it is respectfully prayed that this Court reconsider its order of October 3, 1972, and, on reconsideration, strike the complaint herein and dismiss the cause.

THE VILLAGE OF ARLINGTON HEIGHTS, RALPH CLARBOUR, ALICE HARMS, FRANK PALMATIER, JAMES RYAN, THEODORE SALINSKY, and DWIGHT WALTON, JOHN WOODS, L. A. HANSON, and MARTIN MUNSON,
Defendants,
By /s/ JACK M. SIEGEL,
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation, and ISAAC GREENWOOD, ARTHUR GUTHRIE, and WILLIE RANSOM, on their own behalf and on behalf of all others similarly situated,

Plaintiffs,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, a municipal corporation, RALPH CLARBOUR, ALICE HARMS, FRANK PALMATIER, JAMES RYAN, THEODORE SALINSKY, and DWIGHT WALTON, in their official capacity as Trustees of the Village of Arlington Heights, JOHN WOODS, in his official capacity as Mayor of the Village of Arlington Heights, L. A. HANSON, in his official capacity as Village Manager of the Village of Arlington Heights, MARTIN MUNSON, in his official capacity as Director of Building and Zoning of the Village of Arlington Heights,

Defendants.

NORTHWEST OPPORTUNITY CENTER, INC., and ELUTERIA D. MALDONADO,

Intervenor-Plaintiffs.

No. 72 C 1453.

ORDER.

Defendants' motion to reconsider Judge Lynch's order of October 3, 1972 denying a motion to dismiss the Complaint

is hereby denied. The order appears to be supported by the pleadings and the law, and no new grounds for dismissal are raised by the defendants which did not exist at the time of Judge Lynch's order.

Since the case is now at issue, it will be called for a report on status on Tuesday January 16, 1973 at 10 a.m.

Enter:

/s/ THOMAS R. MCMILLEN,
Judge, U. S. District Court.

Jan. 2, 1973.

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al., *Plaintiffs,* *vs.* THE VILLAGE OF ARLINGTON HEIGHTS, et al., *Defendants.*	No. 72 C 1453

DECISION ON PLAINTIFFS' DISCOVERY MOTIONS.

Plaintiffs on May 24, 1973 filed two motions to compel discovery. The first motion requested an order to compel Joseph Kessler, an employee of defendant Village of Arlington Heights, to answer questions concerning his review of the plaintiff's petition for rezoning. This review was made before any lawsuit was filed and may or may not have been used by defendants in their action complained of in this case. The opinion is not privileged under F. R. C. P. 26(b)(3) or *Hickman* v. *Taylor,* 329 U. S. 495 (1947), and defendant should cause its employee to answer. Plaintiff's request for reasonable expenses in obtaining this order is continued dependent upon defendant's and the witness's compliance with this order.

The second motion is to require defendant Alice Harms, a member of the defendant's city council, to state the information which she had before her when she acted on plaintiffs' petition. This information may be admissible or could lead to admissible evidence. She should therefore answer such questions but need not answer other questions concerning her state of mind when voting. *Palmer* v. *Thompson,* 403 U. S. 217 (1971);

United States v. *O'Brien,* 391 U. S. 367 (1968); see also *Detroit United Railway* v. *City of Detroit,* 255 U. S. 171 at 178 (1921). No expenses are allowable on this motion, since defendant's refusal on one aspect was clearly justified.

Plaintiffs' motions for discovery filed May 24, 1973 are granted to the extent consistent with the foregoing decision.

Enter:

/s/ THOMAS R. MCMILLEN,
Judge, U. S. District Court.

July 10, 1973.

UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit Corporation, et al.,
Plaintiffs,
vs.
THE VILLAGE OF ARLINGTON HEIGHTS, a Municipal Corporation, et al.,
Defendants,
and
NORTHWEST OPPORTUNITY CENTER, INC., an Illinois not-for-profit Corporation, et al.,
Plaintiffs-Intervenors.

No. 72 C 1453

FINAL PRETRIAL ORDER.

I.

STIPULATION OF UNCONTESTED FACTS.

1. Plaintiff Metropolitan Housing Development Corporation ("MHDC"), 407 South Dearborn Street, Chicago, Illinois 60605 is a not-for-profit corporation organized under the laws of the State of Illinois in 1968 for the purpose of developing low-and moderate-income housing in the Chicago metropolitan area.

2. Intervening plaintiff Northwest Opportunity Center, Inc. ("NOC"), 3411 N. Kirchoff Road, Rolling Meadows, Illinois 60008 is a not-for-profit corporation organized under the laws of the State of Illinois in 1971.

3. Defendant Village of Arlington Heights is a municipal corporation organized under the laws of the State of Illinois.

4. Defendants Ralph Clarbour, Alice Harms, Frank Palatier, James Ryan, Theodore Salinsky, and Dwight Walton were, at the time of action on MHDC's request for rezoning, members of the Board of Trustees of defendant Village of Arlington Heights.

5. Defendant John Woods was the Mayor of Defendant Village of Arlington Heights.

6. Defendant L. A. Hanson is and was the Village Manager of defendant Village of Arlington Heights.

7. Defendant Martin Munsen is and was the Director of Building and Zoning of Defendant Village of Arlington Heights.

8. The Clerics of St. Viator is a Catholic religious order formed in 1890 and holds fee title to 80 acres of property including 15 acres where MHDC proposes to build a 236-development in Arlington Heights, Illinois. The 80-acre parcel is bounded on the west by Dryden Lane, on the north by Oakton Street, on the east by the west property line of homes fronting on Drury Lane and on the south by Euclid Avenue.

9. On November 7, 1970, the Clerics of St. Viator entered into a ninety-nine year lease and accompanying agreement to sell to MHDC the vacant parcel of fifteen acres (643,000 square feet) in the southeast corner of the 80 acres described as follows:

> That part of the East half of the Southeast quarter of the Northeast quarter of Section 29, Township 42 North, Range 11, East of the Third Principal Meridian, bounded and described as follows: Beginning at a point on the East line of said Southeast quarter of the Northeast quarter, 40 feet North of the Southeast corner thereof, thence West on North line of South 40.0 feet of said East half of Southeast quarter of Northeast quarter, a distance of 607.99 feet to the East line of the West 50.0 feet of said East half of the Southeast quarter of the Northeast quar-

ter; thence North on said East line of West 50.0 feet of the East half of the Southeast quarter of the Northeast quarter, a distance of 424.0 feet; thence east at right angles to last described course, a distance of 140 feet; thence Northeasterly on a line forming an angle of 59 degrees 30 minutes 00 seconds to the left from the prolongation of the last described course, a distance of 190.0 feet; thence Northwesterly at right angles to the last described course, a distance of 274.41 feet to said East line of West 50.0 feet of East half of the Southeast quarter of the Northeast quarter; thence North on said East line of West 50.0 feet of East half of the Southeast quarter of the Northeast quarter, a distance of 424.44 feet to the South line of the North 131.03 feet of said East half of the Southeast quarter of the Northeast quarter; thence East on said South line of North 131.03 feet of the East half of the Southeast quarter of the Northeast quarter, a distance of 609.18 feet to the East line of said Southeast quarter of the Northeast quarter; thence South on said East line of the Southeast quarter of the Northeast quarter, a distance of 1151.21 feet, more or less, to the place of beginning, all in Cook County, Illinois.

10. The subject 15 acres is bounded on the north by property owned by the Clerics of St. Viator containing a high school, recreation fields, and a nursery. It is bounded on the west by property owned by the Clerics of St. Viator containing a three-story novitiate with communal living facilities and a Montessori school. It is bounded on the east by the backyards of single-family residences facing Drury Lane. It is bounded on the south by Euclid Avenue.

11. The subject property is zoned R-3 in Arlington Heights, a single-family detached home residential district with a minimum lot size of 8,750 square feet.

12. MHDC proposed to build on the subject property a planned unit development in the Village of Arlington Heights with 190 single family attached homes (the "proposed development") under the R-5 multifamily zoning classification of the

Arlington Heights Zoning Ordinance or 12.7 units to the acre as follows:

a. The development would be built for low- and moderate-income families and individuals with subsidies as provided under Section 236 of the National Housing Act of 1968.

b. The housing would be clusters of two stories or less, with separate entrances and private patios.

c. The unit breakdown would be:

   i. 100 one-bedroom units, mostly for elderly;

   ii. 48 two-bedroom units;

   iii. 30 three-bedroom units;

   iv. 12 four-bedroom units.

d. The buildings would cover less than 12% of the property.

e. More than 61% of the property would be open space.

f. Mature trees along Euclid to be saved and planting screening would be provided along the backs of the single-family residences on Drury Lane.

13. On January 29, 1971, MHDC petitioned the Village of Arlington Heights to rezone the subject property from R-3 to R-5.

14. Prior to filing the petition and prior to public hearing, MHDC consulted with the Village staff for preliminary review of the development and in every instance in which changes were recommended by the staff, including changes in fire engine access, garbage disposal and drainage, such changes were incorporated in the MHDC plans.

15. Public hearings were held before the Plan Commission of Arlington Heights on March 3, 1971, April 21, 1971, and June 16, 1971.

16. The MHDC Board of Directors, to meet objections at public hearings:

a. passed a resolution on May 13, 1971 to retain permanent control of the development;

b. secured offers to manage the property from leading real estate managers;

c. passed a resolution agreeing to create a citizens advisory board to be selected by the Mayor of Arlington Heights to participate in planning and management of the development.

17. The Chairman of the Plan Commission read into the record reports of the Fire Chief, the Building Commissioner, the Director of Public Works, and the Acting Director of Engineering.

18. Nevertheless, on June 16, 1971, the Plan Commission voted 7 to 2 to recommend to the Village Board of Trustees that it reject MHDC's rezoning petition.

19. On September 28, 1971, the Village Board of Trustees heard presentations before voting 6 to 1 to deny MHDC's rezoning petition.

20. The Village Board of Arlington Heights approved the report of the Joint Study Committee on Low and Moderate Income Housing which recognized a need for and recommended development of 150 to 250 units of moderate-income housing and 50 units of low-income housing in Arlington Heights.

21. Arlington Heights had a population in 1970 of 64,884, more than twice its 1960 population of 27,878 and more than seven times its 1950 population of 8,768. The black population of Arlington Heights was 1 in 1950, 4 in 1960, and 27 in 1970.

22. The Village staff planner, Mr. Kesler, was not asked for nor did he give any written or oral opinion to the Plan Commission or the Village Board of Arlington Heights.

5.

List of Contested Issues of Fact and Law.

A.

Contested Issues of Fact.

1. Black persons who presently work in Arlington Heights cannot find decent housing in Arlington Heights at a price they can afford.
2. Black persons who presently work in Arlington Heights qualify for and seek the type of housing proposed to be built by MHDC.
3. Plaintiffs Isaac Greenwood, Arthur Guthrie, and Willie Ransom cannot find decent housing at a price they can afford in Arlington Heights.
4. Such Plaintiffs lived in overcrowded sub-standard housing outside Arlington Heights.
5. Isaac Greenwood lived in a segregated area with buildings having code violations. There is no public transportation between his home and his job in Arlington Heights and he, therefore, drives long distances daily at a cost of time and money.
6. The Greenwoods have been looking for, but have been unable to find, decent housing at a price they can afford in the vicinity of Mr. Greenwood's job. The Greenwoods seek, and are eligible for, housing of the type Plaintiff MHDC seeks to build in Arlington Heights.
7. Arthur Guthrie lived in a segregated area with buildings having building code violations.
8. There is no public transportation between his home and his job in Arlington Heights and he therefore drives the long distance daily, a time consuming trip involving excessive expense.

9. The Guthries have been looking for, but have been unable to find, decent housing at a price they could afford in the vicinity of Mr. Guthrie's job. The Guthries seek, and are eligible for, housing of the type Plaintiff MHDC seeks to build in Arlington Heights.
10. Willie Ransom lived in a segregated area with buildings having building code violations.
11. There is no public transportation between his home and his job in Arlington Heights and he therefore drives the long distance daily, a time-consuming trip involving excessive expense.
12. Plaintiff Ransom has sought, but has been unable to locate, adequate housing for himself and his sons in the vicinity of his job. Plaintiff Ransom seeks, and would qualify for, the housing which Plaintiff MHDC seeks to build in Arlington Heights.
13. Euclid Avenue is a heavily traveled road.
14. MHDC has expended in excess of $35,000 developing its proposal and preparing for hearings before the Arlington Heights Plan Commission and the Arlington Heights Trustees.
15. The failure of the Village of Arlington Heights to rezone the subject property from an R3 single-family classification to an R5 multiple-family classification is racially discriminatory in that it has the effect of preventing low and moderate income minority group members, who make up a substantial portion of the low and moderate income population of the Chicago area, from moving from areas of minority concentration to a white area, thereby denying them the opportunity to live in a decent integrated environment and perpetuating residential segregation in the Chicago area.
16. Arlington Heights is one part of the rapidly expanding white suburbs in the Chicago area which is witnessing the

development of most of the new employment facilities in the Chicago area.

17. The Centex Industrial Park was developed in the vicinity of Arlington Heights and contributes substantial amounts in taxes to High School District No. 214 serving Arlington Heights. A number of industries have also built plants within the Village limits of Arlington Heights, among them Honeywell, Inc. These plants employ large blue collar forces including substantial numbers of minority group employees.
18. Minority group employees have been unable to find decent housing in Arlington Heights, and must, therefore, commute long distances to their jobs in Arlington Heights. These workers subsidize residents of the Village by coming in in the morning to man tax-producing properties of the Village but must leave at night because the Village does not permit housing for them.
19. Because of the difficulty, time, and expense of commuting from ghetto areas to Arlington Heights, many minority group members are effectively discourage from seeking employment in Arlington Heights and the Centex Industrial Park.
20. At the same time white suburbs have become increasingly prosperous with the rapid increase in their tax bases as industry has moved to the suburbs, minority group members who work or desire to work in Arlington Heights have been confined to areas where the loss of an adequate tax base has meant deterioration of schools and municipal services.
21. Arlington Heights' exclusion of multi-family dwellings extends only to low and moderate income housing since the Village has often rezoned land for multi-family units designed for the relatively affluent.

22. The proposed rezoning is consistent with the Village's zoning policy and practice, is a reasonable use of the subject property, and meets a critical regional and community need. There are no compelling zoning and planning reasons for denying the rezoning application.
23. Property situated similarly to the subject property has been rezoned upon the landowner's request to R5. In numerous cases the rezoned property was adjacent to single-family and institutional uses.
24. The proposed development is consistent with Arlington Heights' zoning policy and practice as it concerns use of multi-family districts as transitional use districts or buffers between single-family districts and more intense uses.
25. The proposed development would not adversely affect public facilities available to service the subject property.
26. Tax revenues attributable to the proposed development would exceed municipal and school expenditures attributable thereto.
27. The proposed development will not adversely affect the character of the surrounding neighborhood and will not diminish property values.
28. Plaintiff Isaac Greenwood is a black citizen of the United States residing in Chicago, Illinois and employed by Honeywell, Inc. in Arlington Heights, Illinois.
29. Plaintiff Arthur Guthrie is a black citizen of the United States residing in Chicago, Illinois and employed by Honeywell, Inc. in Arlington Heights, Illinois.
30. Plaintiff Willie Ransom is a black citizen of the United States who resides in Evanston, Illinois and is employed by Honeywell, Inc. in Arlington Heights, Illinois.
31. Intervening plaintiff Eluteria D. Maldonado is a citizen of the United States residing in and working in Arlington Heights, Illinois.

32. The Northwest Opportunity Center was formed for the purpose of representing the interests of low and moderate-income residents of the northwest Cook County suburbs in Chicago, Illinois.
33. Isaac Greenwood, at the time of filing of the action, lived with his wife and three children in an apartment on the south side of Chicago.
34. Arthur Guthrie, at the time of filing of the action, lived with his wife and two sons in an apartment on the south side of Chicago.
35. Willie Ransom is divorced and at the time of filing of the action, lived with his minor son in an apartment in Evanston, Illinois.
36. R-3 allows a density of five units to an acre and with requirements of the ordinance approximately 60 single-family units could be built on the property.
37. The proposed development:
    a. would meet all requirements of Section 236 of the National Housing Act of 1968;
    b. is planned for moderate income families;
    c. will have an affirmative marketing program as required by the Department of Housing and Urban Development and be rented on an equal opportunity basis which will result in a racially integrated development.
38. The proposed development meets all requirements of R-5 zoning.
39. All but one of the reports of the Fire Chief, Building Commissioner, Director of Public Works and Acting Director of Engineering (that on water run-off) contained no mention of any problem. The report on water run-off suggested certain changes which MHDC then incorporated in its plans for the proposed development.

40. There is a need for decent housing for those who work or desire to work in Arlington Heights but cannot afford the housing presently available in the Village.

41. The Village of Arlington Heights has zoned its land predominantly for single-family houses which, absent subsidies, low and moderate income persons cannot afford. Although federal subsidies are available under the National Housing Act of 1968 for the construction of single-family houses, the cost of land in Arlington Heights and the cost of construction in the Chicago metropolitan area prevent the development of such low and moderate income housing in Arlington Heights.

42. In addition to the need for low and moderate income housing for nonresident workers and potential workers in Arlington Heights, there is a need, recognized by Arlington Heights itself, for low and moderate income housing for elderly residents of Arlington Heights who can neither afford to maintain and pay property taxes on single-family homes nor afford the apartments presently available in Arlington Heights.

43. When the decision was made by the Village Board of the Village of Arlington Heights on September 28, 1971, the Board members had no information before them other than that presented at the public hearings by MHDC and that adduced by the testimony at public hearings from witnesses from the audience and Village staff.

B.

(i)

Contested Issues of Law.

Certain contested issues of law have already been decided by orders of court on the 3rd of October, 1972 and on the 2nd of January, 1973 in favor of plaintiffs. Copies of such orders are

attached hereto and hereby made a part hereof as Exhibits J and K. The following remain as contested issues of law which are unresolved.

1. The refusal of the Village to rezone the subject property violates the Fourteenth Amendment of the United States Constitution, the Civil Rights Act of 1866 (42 U. S. C. § 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1983), the Fair Housing Act of 1968 (42 U. S. C. §§ 3601 *et seq.*) and Article I, Section 2 of the Illinois Constitution and 24 Ill. Rev. Stat. § 11-13 *et seq.*

2. The action of the Village denying the use of property is unreasonable, arbitrary and capricious.

3. Defendant Village and Defendant Trustees, in refusing to rezone the subject property from R-3 to R-5, have discriminated against the individual plaintiffs by perpetuating racial segregation in housing and in so doing have denied the individual plaintiffs integrated housing opportunities and an opportunity to share in the environmental benefits of land-use planning, while extending those opportunities to wealthier whites who desire to live in Arlington Heights. Defendant Village and Defendant Trustees have violated the Fourteenth Amendment of the United States Constitution and the Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982), the Civil Rights Act of 1871 (42 U. S. C. § 1982), the Fair Housing Act of 1968 (42 U. S. C. § 3601 *et seq.*) and Article I, Section 2 of the Illinois Constitution. In addition, such action, which results in the exclusion of racial minorities from the Village is not in the general welfare, thereby violating the Illinois Zoning Enabling Act, 24 Ill. Rev. Stat. § 11-13 et seq., and is beyond the police power of the state, thereby violating the due process clauses of the Fourteenth Amendment of the United States Constitution and of Article I, Section 2 of the Illinois Constitution.

4. Defendant Village and Defendant Trustees, by unreasonably, arbitrarily, and capriciously denying Plaintiff MHDC its

right to use the property in which it has an interest in a reasonable manner have violated the due process clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution.

B.

(ii)

Defendants' Contested Issues of Law.

1. Is a substantial Federal question raised?

2. Is the single family residential zoning as a matter of law unreasonable?

3. Are the allegations of Complaint sufficient to overcome the presumption of validity of the zoning ordinance?

4. Is the Village of Arlington Heights required to use a different standard for low and moderate income housing than other types of land usage?

UNCONTESTED DOCUMENTS.

Plaintiffs' Exhibits.

1: Notice of public hearing published in Arlington Heights Herald, February 15, 1971. (Objected to by Defendants on basis of relevancy.) (Other objected exhibits are to relevancy).

2: MHDC re-zoning application to the Plan Commission of the Village of Arlington Heights, dated January 29, 1971.

3: MHDC petition for approval for a multiple-dwelling planned development within the Village of Arlington Heights. (Objected to.)

4: Certificate of title registered in volume 1698-1, page 56, of Cook County Registrar of Titles.

5: Lease between the Clerics of St. Viator, lessors and MHDC, lessees, dated November 7, 1970.

6: Plat of survey by Jon P. Tice, dated December 3, 1970, with additions to December 30, 1970.

7: Plans entitled "Lincoln Green" by Seymour S. Goldstein, architect (10-page group exhibit). (Objected to.)

8: Preliminary grading plan by W. A. Rakow & Associates. (Objected to.)

9: Lincoln Green Development alternative tax impact calculations by Salvatore V. Ferrara, June 15, 1971. (Objected to.)

10: Arlington Heights market study by MHDC, dated June 10, 1971. (Objected to.)

11: Analysis of Planning and Zoning Questions Related to Lincoln Green Development, by Norman Drummond, February 23, 1971. (Objected to.)

12: R-5 Buffers, by Norman Drummond, February 23, 1971. (Objected to).

13: Traffic Appraisal, Lincoln Green Residential Development, by Barton-Aschman Associates, Inc., March, 1971. (Objected to).

14: Preliminary engineering report by W. A. Rakow & Associates. (Objected to).

15: Reports to Village of Arlington Heights Plan Commission by Arlington Heights fire, building, public works, and engineering departments. (Objected to).

16: Agreement of purchase and sale between Clerics of St. Viators and MHDC, dated November 7, 1970. (Objected to).

17: Minutes of hearings before the Arlington Heights Plan Commission: March 3, 1971, April 21, 1971; June 16, 1971. (Objected to).

18: Estimate of Effective Demand for Low and Moderate Income Housing, O'Hare Airport Area, by Institute of Urban Life, June, 1970. (Objected to).

19: List of MHDC Board of Directors.

20: MHDC Board of Directors' Resolution.

21: Letter from Baird & Warner on Management. (Objected to).

22: Letter from Draper & Kramer on Management. (Objected to).

23: Letters to local management firm on management contract. (Objected to).

24: Market study on local need in Arlington Heights Area, presented at June 16, 1971 meeting of the Arlington Heights Plan Commission. (Objected to).

25: Village Brook Demographic Report on Section 236 Development in Carol Stream. (Objected to).

26: Revised Tax Impact Study presented at the June 16, 1971 meeting of the Arlington Heights Plan Commission. (Objected to).

27: Summary of Corporate Investors in Moderate-Income Housing. (Objected to).

28: FHA Regulatory Agreement (objected to).

29: Caruso letter to Father Anderson (objected to).

30: Torrens deed on Viatorian Land Purchase.

31: Third Zoning Report by Norman Drummond—"Physical Buffers" (objected to).

32: Fifth Zoning Report by Norman Drummond—"Transitional Use Districts" (objected to).

33: Sixth Zoning Report by Norman Drummond—"Apartment Zoning and High Schools" (Objected to).

34: Seventh Zoning Report by Norman Drummond—"Application of Apartment Policy in Arlington Heights to Lincoln Green".

35: MHDC Board Resolution on Arlington Heights Citizens' Advisory Board. (Objected to).

36: League of Women Voters of Arlington Heights—Mount Prospect statement to the Arlington Heights Plan Commission, March 3, 1971 and April 21, 1971. (Objected to).

37: Petition opposing changing zoning for the proposed Lincoln Green Development signed by 139 citizens. (Objected to).

38: Petitions of residents of the Village of Arlington Heights opposing zoning for the proposed Lincoln Green Development, alleged to contain 3,300 signatures. (Objected to).

39: List of Leadership Council for Metropolitan Open Communities board members.

40: Statements in support of Lincoln Green (sixty-one (61) signed statements received). (Objected to).

41: Statement of Policy on apartments—Arlington Heights Board of Trustees, May 4, 1970.

42: Minutes of the September 28, 1971 meeting of the Arlington Heights Board of Trustees.

43: Minority Report and Exhibit, Arlington Heights Plan Commission, June 16, 1971. (Objected to).

44: Study of the Cook County Office of Economic Opportunity on Arlington Heights, March, 1971. (objected to).

45: Report of the Joint Committee on Low-Moderate Income Housing of the Village of Arlington Heights. (Objected to).

46: Urban League Committee Study of Arlington Heights. (Objected to).

47: Regional Housing Coalition, Study of Suburban Housing Needs. (Objected to).

48: Group Exhibits—Newspaper Articles (Objected to).

49: Map of place of residence of persons working in Northwest Cook County. (objected to)

50: Group Exhibit—Tables of Economic Segregation in the suburbs. (objected to)

51: Map of MHDC site and surrounding land use. (objected to)

52: Zoning Map—R-5 Zoning (Arlington Heights) (objected to)

53: Zoning Map—Access to Community Facilities (Arlington Heights) (objected to)

Defendants' Exhibits.

1. Land use and zoning map prepared by Joe Kesler, Arlington Heights Planning Department.
2. Photographs of subject property prepared under supervision of Joe Kesler.
3. Traffic Study by Paul Box.
4. Zoning Ordinance—Village of Arlington Heights.
5. Zoning Map.
6. Qualifications of Joseph Kesler.
7. Qualifications of F. Gregory Opelka.
8. Qualifications of Rolf C. Campbell.
9. Qualifications of Paul C. Box.

LIST OF WITNESSES EXPECTED TO TESTIFY FOR DEFENDANTS.

Joseph Kesler
Municipal Building
33 South Arlington Heights Road
Arlington Heights, Illinois 60005

F. Gregory Opelka
Fairfield Savings & Loan Association
1601 North Milwaukee
Chicago, Illinois

Rolf C. Campbell
Rolf C. Campbell & Associates
21 North Skokie Highway
Lake Bluff, Illinois 60044

Paul C. Box
Paul C. Box & Associates
4050 Dobson
Skokie, Illinois 60076

John J. Walsh
Municipal Building
33 South Arlington Heights Road
Arlington Heights, Illinois 60005

Allen Sander
Municipal Building
33 South Arlington Heights Road
Arlington Heights, Illinois 60005

Edward C. Anderson, President
The Clerics of St. Viator
1100 Forest Avenue
Evanston, Illinois

LIST OF WITNESSES EXPECTED TO TESTIFY FOR PLAINTIFFS.

Clyde Brooks
Minority Industrial Relations Council
1115 North River Road
DesPlaines, Illinois 60016

Eugene Callahan
M. Myers Associates, Inc.
645 North Michigan Avenue
Chicago, Illinois 60611

Pierre deVise
College of Urban Sciences
University of Illinois—Chicago Circle Campus
601 South Morgan Street
Chicago, Illinois 60608

Norman Drummond
Associated Planners
210 Skokie Valley Road
Highland Park, Illinois 60035

John Ducey
1230 East Union Avenue
Fullerton, California 92631

Salvatore V. Ferrera
Executive Vice President
Metropolitan Housing Development Corporation—Plaintiff
407 South Dearborn Street
Chicago, Illinois 60605
(occurrence and expert)

James P. Foley
James P. Foley Associates, Inc.
180 North LaSalle Street
Chicago, Illinois 60601
(expert)

Patricia Gardner
Arlington Heights—Mt. Prospect League of Women Voters
408 South Bristol
Arlington Heights, Illinois

Seymour Goldstein
Seymour Goldstein & Associates
12 East Delaware Street
Chicago, Illinois 60611
(expert)

Harry Gottleib, Director
Regional Housing Coalition
407 South Dearborn Street
Chicago, Illinois 60605

Isaac Greenwood—Plaintiff
6507 South Stewart
Chicago, Illinois 60621

Arthur Guthrie—Plaintiff
10019 South Beverly
Chicago, Illinois 60643

Howard Kagey
Arlington Heights Homeowners Association
824 North Drury
Arlington Heights, Illinois 60008

John Kane
Metropolitan Housing Development Corporation—Plaintiff
407 South Dearborn Street
Chicago, Illinois 60605

John G. Langhenry
69 West Washington Street
Chicago, Illinois 60602

Thomas Larwin
Barton-Aschman Associates
1771 West Howard Street
Chicago, Illinois 60626

Eluteria D. Maldonado—Plaintiff-Intervenor
1652 Windsor Drive
Arlington Heights, Illinois 60008

Bruce Newton
Hector Martinez
Northwest Opportunity Center, Inc.—Plaintiff-Intervenor
3411 Kirchoff Road
Rolling Meadows, Illinois 60008

Willie Ransom—Plaintiff
1423 Dewey
Evanston, Illinois

Frank E. Steiner
U. S. Commission on Civil Rights
209 South Dearborn Street
Chicago, Illinois 60604

Robert B. Teska
Barton-Aschman Associates, Inc.
1771 West Howard Street
Chicago, Illinois 60626
(expert)

Alice Harms
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

John Best
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

Joseph Kesler
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

L. A. Hanson
Village Manager
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

Martin Munsen
Building Inspector
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

Dwight Walton
c/o Village of Arlington Heights
Arlington Heights, Illinois 60008

The qualifications of the expert witnesses listed herein are attached hereto with resumes, Exhibits A through I.

Exhibit A.

Pierre De Vise
6926 South Constance Avenue
Chicago, Illinois 60649
Phone: (312) 643-3514

Office: 70 BSB, University of Illinois at Chicago Circle
Box 4348
Chicago, Illinois 60680
Phone: (312) 996-5240

Education

Urban Studies, doctoral candidate, University of Chicago, current; Political Science, M.A., University of Chicago, 1958; Economics, B.A., University of Chicago, 1944; Liberal Arts, A.A. Wright City College, 1941.

Professional History

1973- College of Urban Sciences, UICC; 1971-1973 Illinois Regional Medical Program; 1963-1970 Hospital Planning Council for Metropolitan Chicago; 1962-Present DePaul University (part-time); 1962-1963 Chicago Department of City Planning; 1960-1961 Northeastern Illinois Planning Commission.

Professional Experience

1971-1973, Illinois Regional Medical Program,

As Assistant Director for Health Information, Mr. DeVise was responsible for coordinating the activities of IRMP in the area of health information and data collection, and for pro-

viding guidance in the development of data necessary for specific IRMP projects and programs.

1963-1970, Hospital Planning Council for Metropolitan Chicago.

As Assistant Director for Research, Mr. de Vise was responsible for determining community needs for current and future hospital beds, delineating hospital service districts to serve as planning units for the Hill-Burton Program, and preparing small area population projections.

As Principal Investigator of the Chicago Regional Hospital Study (1966-Present), Mr. de Vise is responsible for constructing simulation models capable of predicting and prescribing the geographical distribution of hospital facilities needed for future projected populations.

1962-1963, Chicago Department of City Planning.

As Senior Planner for the City of Chicago, Mr. de Vise was responsible for examining patterns and causes of change in location of residential, commercial and industrial land uses in the metropolitan area.

1960-1961, Northeastern Illinois Planning Commission.

As Research Planner for the State of Illinois, Mr. de Vise was responsible for studying factors underlying differential growth rates of suburban communities.

Assistant Professor, College of Urban Sciences University of Illinois at Chicago Circle, since 1973. Responsible for health planning specialization in the Master of Urban Planning and Policy Program.

Lecturer, Departments of Geography and Sociology, De Paul University, 1962-Present. Graduate level instruction in Economic Geography, Urban Geography, the Geography of Metropolitan Chicago, Population Analysis, and Urban Sociology.

Lecturer, Institute on Long-Range Planning for the Hospital, American Hospital Association, Summer 1966.

Lecturer, Institute on Community Health Planning, University of Michigan School of Public Health, Summer 1967.

Lecturer, Training for Consumer Participation in Health Planning, Center for Continuing Education, University of Chicago, Winter 1968.

Lecturer, Institute on Health Planning, Center for Health Administration Studies, University of Chicago, Spring 1969.

Lecturer, School of Public Health, University of Hawaii, March 1969.

Lecturer, School of Education, University of Chicago, July 1969, July 1970, March 1971.

Visiting Lecturer, University of Illinois, Medical School, since 1970.

Visiting Professor, Health and Hospital Administration Program, University of Iowa, February 1971.

Visiting Lecturer, University College, University of Chicago, since 1971.

Lecturer, Institute of Equal Education, University of Hartford, July 1971.

Lecturer, Center For Urban Studies, University of Akron, October 1971.

Lecturer, Institute of Politics, Harvard University, April 1972.

Instructor, Department of Preventive Medicine, University of Illinois at the Medical Center, since 1971.

Instructor, School of Public Health, University of Illinois, since 1972.

Visiting Professor, George Williams College, August 1972.

Professional Affiliations

American Association of Geographers; American Public Health Association; American Statistical Association, Vice

President, Chicago Chapter; Conference on Community Health Planning; Population Association of America.

Pierre de Vise

Personal Publications

A Social Geography of Metropolitan Chicago, Northeastern Illinois Planning Commission, 1961.

Suburban Factbook, Northeastern Illinois Planning Commission, 1961.

An Atlas of Chicago's People, Jobs, and Homes, Chicago Department of City Planning, 1963.

Chicago's Widening Color Gap, Chicago: Interuniversity Social Research Committee, 158 pp., 41 tables, 22 figures, December 1967.

"Negroes and Chicago's Comprehensive Plan," in Edwin Berry and William Stafford (eds.), Aspects of Urban Planning, Chicago Urban League, May 1968.

"Methods and Concepts of an Interdisciplinary Regional Hospital Study," Health Services Research, Vol. III, Number 3, Fall 1968, pp. 166-173.

Slum Medicine: Chicago's Apartheid Health System, Chicago: Interuniversity Social Research Committee, January 1969.

"White Future, Black Past: A Tale of Two Cities," Renewal, Vol. 9, Number 2, February 1969, pp. 8-13.

"Model Cities, A Forecast of Failures," New Chicago, May 16, 1969, p. 2.

"Local Characteristics of Chicago Area Communities," in Third Annual Metropolitan Chicago Industrial Development Guide, Section of the July 1969 issue of Commerce Magazine, Chicago Association of Commerce and Industry, pp. 42 *et seq.*

"Planning Emphasis Shifts to Consumers," Modern Hospital, Vol. 113, Number 3, September 1969.

"Medical Care . . . Chicago Style," New Chicago, October 17, 1969, p. 3.

"Chicago: A Victim of Its Own Success," Community, October 1969, pp. 8-17.

"Behavioral Bases of Changing Social Space," Ch. 11 in Brian J. L. Berry and Frank Horton, Geographic Perspectives on Urban Systems. Englewood Cliffs, New Jersey: Prentice-Hall, March 1970.

"We Spend Enough Money on Care for the Poor, But We Spend it Badly," Modern Hospital, May 1970, Vol. 114, Number 5, pp. 84-86, 148.

"Poverty and Government: Increasing Segregation and Polarization Mark the Chicago Regime," Focus/Midwest, Vol. 7, Number 48, pp. 12-13, 22-23.

"Chicago Hospitals—A Disaster," Focus/Midwest, Vol. 8, Number 51, pp. 14-19.

"America's Sick Health Government," Ch. 6 in American Politics in Transition from the Sixties to the Seventies, World Student Christian Federation, 1971, pp. 97-104.

"Social Pressures for Change," *Hospitals,* J. A. H. A., February 1, 1971, Vol. 45, pp. 51-55

"Cook County Hospital: Bulwark of Chicago's Apartheid Health System," *New Physician,* June 1971, pp. 394-398.

"Suburban Taxes—A Rigged Lottery," *Chicago Tribune,* September 10, 1971, p. 20.

"The Risks in Revenue Sharing," *FOCUS/Midwest,* Vol. 8, No. 53, 1971, pp. 10-11.

"Everything Has Its Price," Perspective, *Chicago Tribune,* October 18, 1971, p. 18.

"Chicago's Widening Color Gap: 1971," *Integrated Education,* November-December, 1971, Vol. IX, No. 6, pp. 37 to 42.

"Physician Needs for Illinois in the 1970's," *Health Planning in Illinois,* Fall 1971, Vol. II, No. 3, pp. 4 to 9.

"Cook County Hospital: Prototype of the Nation's Public Hospitals," *Antipode*, Vol. 3, No. 1, November 1971, pp. 9-20.

"Maldistribution of Physicians," *The New Physician*, October 1972, pp. 611-614.

"Jobs Follow Whites in Move to Suburbs: The Wasting of Chicago," *Daily Defender*, October 18, 1972, pp. 3, 8 and 11.

"Physician Migration from Inland to Costal States: Antipodal Examples of Illinois and California," *Journal of Medical Education*, Februray 1973, 48:2, pp. 141-151.

"Chicago, 1971: Ready for Another Fire?" Ch. 3 in *Geographical Perspectives on American Poverty*, Richard Peet, editor, Antipode Monographs in Social Geography, Number One, 1972.

"The Wasting of Chicago," *FOCUS/Midwest*, Vol. 9, No. 58, 1973, pp. 7-9.

"Where the Suburbs Are Heading," *Lerner-Life Newspapers*, March 1, 1973, Section 3, page 1.

Misused and Misplaced Hospitals and Doctors, Resource Paper Number 21, Commission on College Geography, Washington, D. C., Association of American Geographers, 1973.

"One Way Out of the Urban Maze: Unclog Ryan, Building Crosstown," *Chicago Tribune*, Perspective, April 8, 1973, Section 2, pp. 1 and 2.

"America's Ailing Health System," *Public Welfare*, The Journal of the American Public Welfare Association, Spring, 1973, Vol. 31, No. 2, pp. 18-23.

"Murder, Chicago Style: Myths and Realities of Urban Violence," *The Critic*, May-June 1973, Vol. XXXI, No. 5, pp. 26-33.

Agency Publications (principal, major, and minor contributor).

Outdoor Recreation: Needs and Preferences of the People of the Chicago Area, Northeastern Illinois Planning Commission, August 1961 (major).

The Demand for Boating, Fishing, Hunting, and Skiing Among Residents of Metropolitan Chicago, Northeastern Illinois Planning Commission, August 1961 (principal).

School District Organization and Finances in the Chicago Metropolitan Area, Northeastern Illinois Planning Commission, October 1961 (principal).

Community Renewal Program Report, Chicago Department of City Planning, March 1964 (minor).

Basic Policies for the Comprehensive Plan of Chicago, Chicago Department of City Planning, August 1964 (minor).

Basic Planning Studies on Metropolitan Chicago, Technical Report No. 1, Hospital Planning Council for Metropolitan Chicago, April 1965 (principal).

Hospital Study Districts for Metropolitan Chicago, Technical Report No. 2, Hospital Planning Council for Metropolitan Chicago, April 1966 (principal).

"Population Estimates for Municipalities and Counties in the Chicago Consolidated Area," Hospital Planning Council for Metropolitan Chicago, annual since 1964 (principal).

"Median Family Income and Home Value of Municipalities in Metropolitan Chicago," Hospital Planning Council for Metropolitan Chicago, 1966, 1968; Illinois Regional Medical Program, 1970 (principal).

Annual Report, Hospital Planning Council for Metropolitan Chicago, 1964 to 1970 (minor).

Biographies

Who's Who in the Midwest, since 1970.

Article by Gregg Ramshaw in *Chicago Today Magazine*, March 1, 1970, pp. 7-11.

Article by Lois Wille in *Inland Architect*, May 1970, 14:4, pp. 20-22.

Article by Cornelia Honchar in *Chicago Tribune*, Sunday, May 28, 1972, p. 11.

Article by Anthony Monahan in *Midwest*, The Chicago Sun-Times Magazine, Sunday, June 17, 1973, pp. 6-9.

Exhibit B.

Norman Drummond, AIP
Partner

In 1966 Norman Drummond was appointed Director of the Lake County (Illinois) Regional Planning Commission. His public agency planning career began in the offices of the Lorain County (Ohio) Regional Planning Commission. Between 1957 and 1969 he gained broad experience in city and regional planning, neighborhood redevelopment, site planning, and administration. In addition to being Director of the Lake County agency from 1966 to 1969 he was Chairman of the Community Shelter Plan Technical Advisory Committee, Secretary of the Lake County Housing Study, and a member of the Lake County Transportation Study Policy Committee.

Prior to forming Associated Planners, Norman Drummond operated his own planning consulting firm. He was planning consultant to the Illinois Zoning Laws Study Commission and helped draft a new zoning enabling law for Illinois.

As an undergraduate Norman Drummond studied both architecture and sociology at The Ohio State University. In 1961 he was appointed J. C. Nichols Fellow of the Urban Land Institute at Ohio State where he received his Master of City Planning degree in 1963.

Norman Drummond is a member of the American Institute of Planners, the American Society of Planning Officials, and the

Illinois Planning and Conservation League. He has lectured on planning related subjects for the University of Illinois and the Illinois Bar Association, and teaches a public service course on planning and zoning at the College of Lake County. He has published articles in the proceedings of the Institute on Zoning and the Handbook of the Institute for Continuing Legal Education.

Norman Drummond, AIP
Partner

Member:

American Institute of Planners; American Society of Planning Officials; Illinois Planning and Conservation League.

Education:

The Ohio State University; B. A.; The Ohio State University; M. C. P.; J. C. Nichols Fellow of the Urban Land Institute.

Experience:

Norman Drummond Planning
President

Consulting:

State of Illinois, Zoning Laws Study Commission; Delavan Lake Improvement Association; Metropolitan Housing Development Corporation; Mobile Home Management Corporation; Elmhurst, Illinois; Waukegan Port District.

Land Development:

Mid-City Developers Inc., Washington, D. C.; Keepper/Nagle Real Estate Investments, Inc.; N. H. Engle and Sons (planned development); Larsen Industrial Park; Diamond Lake Partnership (planned development); Webber Duck Farm (recreational vehicle park).

Land Use Controls:

Lake County, Mobile Home Park Ordinance.

Expert Testimony:

North Shore Sanitary District; Libertyville Countryside Association; Harry Young, Attorney at Law; Jack Gould and Co.; Louis W. Brydges, Attorney at Law; Grayslake, Illinois.

Lake County Regional Planning Commission
Director

Comprehensive Community Planning:

Grayslake, Illinois; Wauconda, Illinois; Gurnee, Illinois; Mundelein, Illinois; Round Lake, Illinois; Round Lake Beach, Illinois; Round Lake Park, Illinois; Lake Bluff, Illinois.

Regional Planning:

Lake County Transportation Study; Open Space Study; Population Forecast; Land Use Plan; Natural Resources Study Design; Lake County Housing Study.

Special Studies:

Enrollment Forecast School District 115; Quality of a Region; Site Location Study for a Mental Health Facility; Des Plaines River Study; Community Shelter Plan, Lake County, Illinois.

Land Use Controls:

Zoning Ordinance, Lake County; Subdivision Regulation, Lake County; Planned Unit Development Ordinance, Lake County; Subdivision Regulation, Long Grove, Illinois.

Expert Testimony:

Grayslake, Illinois; Lake County, Illinois.

The Ohio State University
Research Associate.

The Impact of Shopping Centers on Secondary Retail Locations.

Ohio Department of Industrial and Economic Development
Senior Planner

Review of 701 Planning Projects.

Office of Campus Planning, OSU
Senior Planner

Site Planning; Neighborhood Redevelopment Planning.

Lorain County Regional Planning Commission
Planner

Open Space and Recreation Study, Lorain County, Ohio; A Plan for Fire Station Locations, Elyria, Ohio.

Articles:

"The Planning Process", *Land Use and Zoning in Illinois;* The Institute for Continuing Legal Education, Springfield, Illinois.

"Changing the Planning and Zoning Relationship", *Change*: *The Recurring Zoning Issue;* Proceedings of the Institute on Zoning, University of Illinois at Urbana-Champaign Bureau of Urban and Regional Planning Research, Department of Urban and Regional Planning, May 1970.

Lectures:

"The Planning Process", Land Use and Zoning Short Course, The Institute for Continuing Legal Education at Springfield, Urbana, Rockford and Chicago.

"Changing the Planning and Zoning Relationship", Institute on Zoning, Bureau of Community Planning, University of Illinois at Pere Marquette State Park, Grafton, Illinois.

"Ecology and Urban Design" for a course entitled *Introduction to the Urban Planning Profession,* University of Illinois at Urbana-Champaign.

Exhibit C.

Dr. Salvatore Ferrera
838 Fair Oaks, Oak Park, Illinois 60302 312/383-7566

Married, six children 5′ 9″ 160 pounds 40 years old

Housing Development 1969 to present Metropolitan Housing Development Corporation, Chicago. *Executive Vice President*, non-profit corporation developing low and moderate income housing in the Chicago metropolitan area. Responsible for $500,000.00 in development funds; direct a staff of professionals including planners, housing experts, real estate brokers, and consultants in Architecture, Design, Law and Mortgage Banking.

Consulting Experience 1967 to 1969 Barton-Aschman Associates, Chicago, Illinois. *Associate with Engineering and Planning Consultants*, responsible as Project Director for $160,000 in new promotions. Work included Mass Transit Planning, Transportation Research, Marketing and Economic Feasibility Studies, Housing Studies and Urban Information Systems Studies.

Research Experience 1963 to 1967 Chicago Area Transportation Study—Planning Agency. *Director of Research and Planning*. Supervised 25 researchers with graduate degrees in engineering, urban planning, geography, economics, sociology, demography, statistics and systems research. Research program included Economic and Demographic Forecasting, Quantitative Models for Urban Development, Future Travel Demand, and Traffic Simulation; and Economic Models for Benefit-Cost Analysis and Evaluation of Transportation Plans.

Education 1969 University of Chicago—Graduate School of Economics. *Ph.D. in Economics, March, 1969*. Dissertation: "The Effects of Urban Renewal on Property Values in Chicago." Ph.D. qualifying exams in economic theory, money and banking, and international economic theory; concentration in statistics and econometrics.

1962 to 1963 *Held Relm Foundation Fellowship in Urban Economics*. Did research in Urban Economics Workshop.

1961 Researched U. S. Balance of Payments problem including econometric study of "Substitution Elasticities of U. S. Exports w.r.t. European Exports."

1958 *Relm Foundation Research Grant* to study "Effects of Inflation on Major Countries of the World, 1900-1950," published as a statistical appendix in Dr. Freidrich Van Hayek's *The Constitution of Liberty*.

1956/1958 Held Earhart Foundation Fellowship in Economics.

1958 *M. S., December, 1958*. Thesis: "Some Theoretical Aspects of the Marginal Utility of Money."

1951 to 1956 Northwestern University, Evanston, Illinois. *B. S. In Industrial Engineering, June, 1956*. Economics minor with emphasis on statistics, mathematics (through calculus) and other quantitative methods of analysis. Elected to Student Governing Board during senior year.

Teaching Experience 1961-1962 De Paul University, Chicago, Illinois. Instructor of Finance. Taught Business, Corporate and International Finance, Money and Banking, and Principles of Economics.

1958 to 1961 University of Illinois, Chicago, Illinois. Instructor of Economics and Statistics; taught Money and Banking, Statistics, Interpretation of Business Data.

Summers 1957-1960 Indiana University, East Chicago, Indiana. Instructor of Economics.

Engineering Experience 1957 Western Electric Company, Cicero, Illinois. Industrial Engineer in Statistical Quality Control Laboratory.

1956 Johnson and Johnson Company, Chicago, Illinois. Industrial Engineer in Industrial Relations Department doing statistical wage surveys, job evaluation, and preparation of wage structures.

1953 to 1956 H. M. Harper Company, Morton Grove, Illinois, Automatic Electric Company, Chicago, Illinois. Industrial Engineer including Methods Engineering, Testing, Standard Costing, and Statistical Quality Control.

Personal Background. Born and raised in Chicago, attended public schools, graduated Lane Technical High School, active in student government both high school and college, married in 1956, wife a graduate of Mundelein College, Chicago.

Professional Activities. Member, *National Academy of Science*, Highway Research Board, Committee on Land Use Evaluation and Urban Development Models.

Member, Editorial Advisory Board of *"Transportation Research,"* an international journal of the Institute of Transportation, U. C. L. A.

Member, American Economic Association; American Institute of Planners; American Statistical Association; Urban and Regional Information Systems Association.

Exhibit D.

Oct. 18, 1973

Seymour S. Goldstein
Architects Ltd.
910 North Ernst Court
Chicago, Illinois 60611
312-787-0328.

ARCHITECT'S EXPERIENCE, BACKGROUND, AND ACCOMPLISHMENTS

The architect, has twenty years housing experience with the last eight years almost exclusively devoted to moderate and low income housing, utilizing federal sponsored programs of 221(d)(3), and 236. He has completed the second phase of a highly successful moderate income project utilizing the Planned Unit Development concept in Rockford, Illinois. His office had recently completed the building of a large housing complex in Chicago at 18th and Kostner and another at 37th & Lake Park. These are the first developments in this region using the 236 program.

The office has two moderate income projects, awarded by the DUR, in the Lincoln Park Project I. One project entails five city blocks of mixed moderate, middle and low income in a planned development.

The architect has a home in this area and has involved himself in community action for some years. He was Chairman of the Planning Committee of Lincoln Park Conservation Association. This office also was responsible for a number of buildings, new and remodeled, adjacent to, or within this area of development.

The office is presently engaged in three large federal or state sponsored programs—two being within the City of Chicago and

one being a large planned unit development in the Metropolitan Area.

He has been witness in many zoning hearings on planned developments for projects in Chicago and outlying areas. Including Addison, Schaumburg, Streamwood, Waukegan and Joliet in Illinois; in Milwaukee and Madison Wisconsin; in Detroit Michigan; in Denver Colorado, and Stockholm Sweden as zoning expert and architect of the projects.

Exhibit H.

QUALIFICATIONS AND BUSINESS RESUME OF JAMES P. FOLEY, S. R. P. A., M. A. I.

General Industry Experience.

Nineteen years experience in Real Estate Appraising, Sales Management, Development and Mortgage Lending in the Chicago Metropolitan Area and States of Alabama, Arizona, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Washington, West Virginia, Wisconsin and Wyoming.

Real Estate Appraiser and Real Estate Consultant.

1954-1957: Mortgage Loan and Real Estate, Investment Department, Prudential Insurance Company of America, Chicago, Illinois.

1957-1960: Armond D. King, Inc., Real Estate, Skokie Illinois.

1960-1964: Assistant Vice President, Greenebaum Mortgage Company, Chicago, Illinois.

1964-1973: James P. Foley Associates, Inc., Real Estate Appraisers—Real Estate Consultants, Chicago, Illinois.

Clientele Profile.

Life and Casualty Insurance Companies; State, National and Savings Banks; Institutional and Private Investors; Attorneys; State, Federal and Local Governmental Agencies; School Districts; Federal Housing Administration; Small Business Administration; Expert in Zoning and Condemnation Matters in Circuit and Superior Court, Cook, DuPage and Will Counties, Illinois.

Active Membership.

Chicago Mortgage Bankers Association
Chicago, Illinois

Senior Real Property Appraiser
Society of Real Estate Appraisers
Chicago, Illinois

Chicago Real Estate Board
Chicago, Illinois

American Institute of Real Estate Appraisers-Certificate No. 3372
Chicago, Illinois

General Education.

Bachelor of Arts Degree, 1950, Social Science Major, DePaul University, Chicago, Illinois.

Special Education.

Courses I and II, American Institute of Real Estate Appraisers and Various Real Estate Courses, Central Y. M. C. A. Community College, Chicago, Illinois.

Educational Activities.

Dean of Course and Instructor in Principles and Techniques of Residential Appraising, Society of Real Estate Appraisers.

Lecturer and Guest Speaker before Various Corporate Management, Real Estate Industry Seminars, and Civic Organizations.

The Appraiser's entire business career has been in Real Estate except for the period immediately following College, 1950-1952, during which time he was employed by Continental Grain Company, and 1952-1954, when he was in the United States Army.

James P. Foley Associates, Inc. was formed in 1964 at 111 West Washington Street, Chicago, Illinois, and moved to 180 North LaSalle Street, Chicago, Illinois, in 1973. The firm, which has twenty full-time employees, was incorporated in Illinois in 1969. The Charter permits Real Estate Appraising and Real Estate Consultation and the Corporation or its employees are not active in any other real estate functions or businesses. Business references and clientele references are furnished upon request and only with the explicit permission of parties or clientele involved.

Exhibit I.

RESUME OF CLYDE BROOKS.

I have a Masters Degree in the Social Sciences from Western Illinois University. I have lived in the suburbs of Elk Grove Village since 1965.

In terms of employment, I am currently a consultant to Civil Industries in the area of affirmative action. I am also currently the President of the Minority Industrial Relations Council, which is an organization consisting of 30 major suburban corporations who are required by law to employ and upgrade minorities and females. That job involves the promotion of housing opportunities for poor and minority people.

I'm the President of the Suburban Chapter of the Southern Christian Leadership Conference, an organization that is committed to housing opportunities for all Americans. We are working diligently and aggressively in that area in the suburbs. I am also connnected with the Minority Information Referral Center, Inc., which is located in Des Plaines, Illinois. The purpose

for that center is to promote employment, housing and business opportunities for minorities.

I am a consultant to Scotts Forsman Publishing Co., Blue Cross, and I'm a college professor at Harper College in Palatine as a sociology instructor.

1966-1973: Cook County Office of Economic Opportunity; area director in charge of poverty programs in North Cook County, which includes Arlington Heights.

All of my activities since moving to Elk Grove Village the eight or nine years has involved the suburbs.

Prior to 1966 when I joined CCOEO, I was with the Sears Cooperative Project in Lawndale as a director of that program. My job involved directing cultural, social, economic opportunities for poor and minority people in the Lawndale area.

Prior to that, I have been a high school teacher, an elementary teacher, a probation officer with juvenile court, and an employee with the Commission on Youth Welfare.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted In Printing.]

STIPULATION.

It is hereby stipulated by and between the parties that the Final Pretrial Order may be amended to strike Mr. Thomas Larwin as a witness for the Plaintiffs and include Mr. Neil Kenig in his stead.

.....

Attorney for the Plaintiffs,

.....

Attorney for the Defendants.

Prepared by:

F. WILLIS CARUSO,
407 South Dearborn Street,
Chicago, Illinois 60605,
341-9345.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted In Printing.]

STIPULATION AS TO ADDITIONAL UNCONTESTED DOCUMENTS.

It is hereby STIPULATED by and between the parties that Plaintiffs Exhibit 54 which is a model of the MHDC development may be added to the final pretrial order having inadvertently been left out at the time of preparation of such order. Such Exhibit is objected to by Defendants on the grounds of relevancy.

.....

Attorney for the Plaintiffs,

.....

Attorney for the Defendants.

Prepared by:

F. WILLIS CARUSO,
407 South Dearborn Street,
Chicago, Illinois 60605,
341-9345.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted In Printing.]

STIPULATION.

It is hereby stipulated by and between the parties that the pretrial order, heretofore filed herein, be amended by adding to the defendants' exhibits, the following:

10. Summary of Rejected Multiple-Family Zoning Proposals, 1962 to Present, prepared under supervision of Joseph Kesler.

11. Map showing requests for multiple-family zoning district, turned down.

12. Key Map of Drummond Study.

13. Map showing vacant multiple-family zoning at time of application.

14. Group of photographs showing area surrounding subject property.

15. Key Map for photographs.

Plaintiffs may add an additional witness Thomas Coulter.

VILLAGE OF ARLINGTON HEIGHTS, et al.,
Defendants,

By /s/ JACK M. SIEGEL,
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al.,
Plaintiffs,

By /s/ F. WILLIS CARUSO,
Their Attorney.

F. WILLIS CARUSO,
407 South Dearborn Street,
Chicago, Illinois 60605,
341-9345.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

[Title Omitted In Printing.]

AMENDMENT TO PRETRIAL ORDER.

The final pretrial order, heretofore filed herein, be and it is hereby amended by adding to defendants' exhibits, the following:

10. Summary of Rejected Multiple-Family Zoning Proposals, 1962 to Present, prepared under superivsion of Joseph Kesler.

11. Map showing requests for multiple-family zoning district, turned down.

12. Key Map of Drummond Study.

13. Map showing vacant multiple-family zoning at time of application.

14. Group of photographs showing area surrounding subject property.

15. Key Map for photographs.

Plaintiff may add Thomas Coulter as a witness.

VILLAGE OF ARLINGTON HEIGHTS, et al.,
Defendants,

By /s/ JACK M. SIEGEL,
Their Attorney.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
263-2968.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

Name of Presiding Judge, Honorable Thomas R. McMillen.

Cause No. 72 C 1453. Date February 22, 1974.

Title of Cause—Metropolitan Housing Development Corp. v. The Village of Arlington Heights, et al. and Northwest Opportunity Center.

Enter decision that judgment is entered on the Complaint and on the Intervening Complaint in favor of the defendants.

(Draft.)

McMillen, J.

UNITED STATES DISTRICT COURT,
For the Northern District of Illinois,
Eastern Division.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, an Illinois not-for-profit corporation, and
ISAAC GREENWOOD, ARTHUR GUTHRIE, and WILLIE RANSOM, on their own behalf and on behalf of all others similarly situated,
Plaintiffs,
vs.
THE VILLAGE OF ARLINGTON HEIGHTS, a municipal corporation, et al.,
Defendants,
and
NORTHWEST OPPORTUNITY CENTER, INC., an Illinois not-for-profit corporation, and ELUTERIA D. MALDONADO,
Plaintiffs-Intervenors.

File Number 72 C 1453

NOTICE OF APPEAL.

Notice is hereby given that Metropolitan Housing Development Corporation, Isaac Greenwood, Arthur Guthrie, Willie Ransom, Northwest Opportunity Center, Inc., and Eluteria D. Maldonado, plaintiffs and plaintiffs-intervenors above named, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the final judgment entered in this action on the 22nd day of February, 1974.

March 22, 1974.

/s/ ROBERT G. SCHWEMM,
Attorney for Plaintiffs and Plaintiffs-Intervenors.

ROBERT G. SCHWEMM,
407 South Dearborn Street,
Chicago, Illinois 60605,
341-9345.

CERTIFICATE OF SERVICE.

I hereby certify that on this 6th day of June, 1974, I served the foregoing Appendix upon Jack M. Siegel, attorney for defendants-appellees, by mailing two copies thereof by first-class pre-paid mail to said attorney at his offices at 39 S. LaSalle Street, Chicago, Illinois 60603.

/s/ ROBERT G. SCHWEMM,
Attorney for Plaintiffs-Appellants and Intervening Plaintiffs-Appellants.

OPINION BY JUDGE SWYGERT.
(Judge Fairchild dissenting.)

UNITED STATES COURT OF APPEALS,
For the Seventh Circuit,
Chicago, Illinois 60604.

June 10, 1975

Before

HON. THOMAS E. FAIRCHILD, *Chief Judge,*
HON. LUTHER M. SWYGERT, *Circuit Judge,*
HON. ROBERT A. SPRECHER, *Circuit Judge.*

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, etc., et al.,
Plaintiffs-Appellants,

No. 74-1326

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, etc., et al.,
Defendants-Appellees,

NORTHWEST OPPORTUNITY CENTER, INC., et al.,
Intervening Plaintiffs-Appellants.

} Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, reversed, with costs, and this cause be and the same is hereby remanded to the said district court for entry of judgment in accordance with the opinion of this court filed this day.

FILED
JAN

APPENDIX—VOLUME II.—EXHIBITS.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents.

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners.

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO.
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

Plaintiffs' Exhibit 51—
Map of Area 113

Plaintiffs' Exhibit 52—
R-5 Zoning 114

Defendants' Exhibit 1—
Existing Land Use, Existing Zoning 115

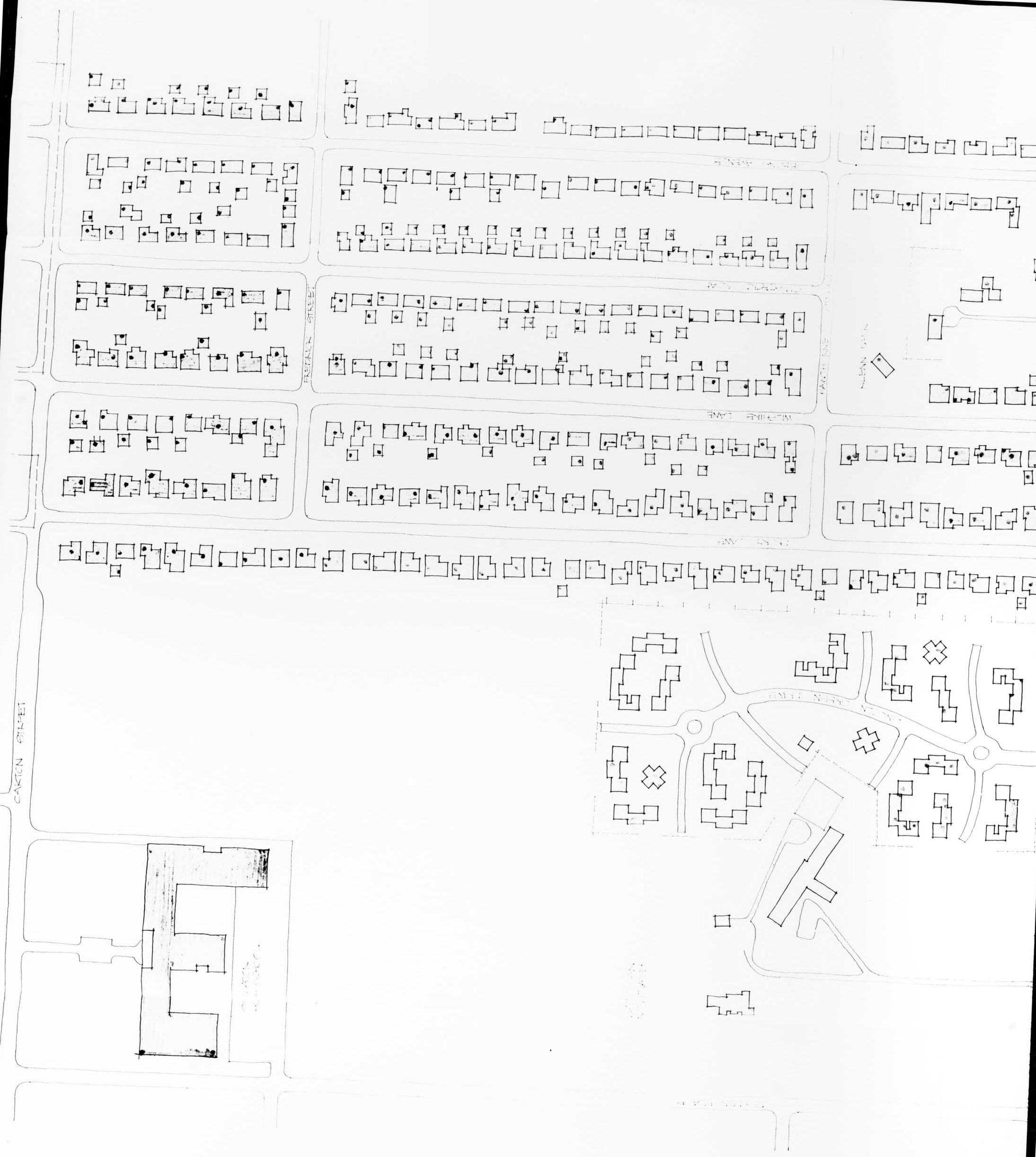
Defendants' Exhibit 2—
Photographs of Subject Site and Adjacent Areas ..116-117

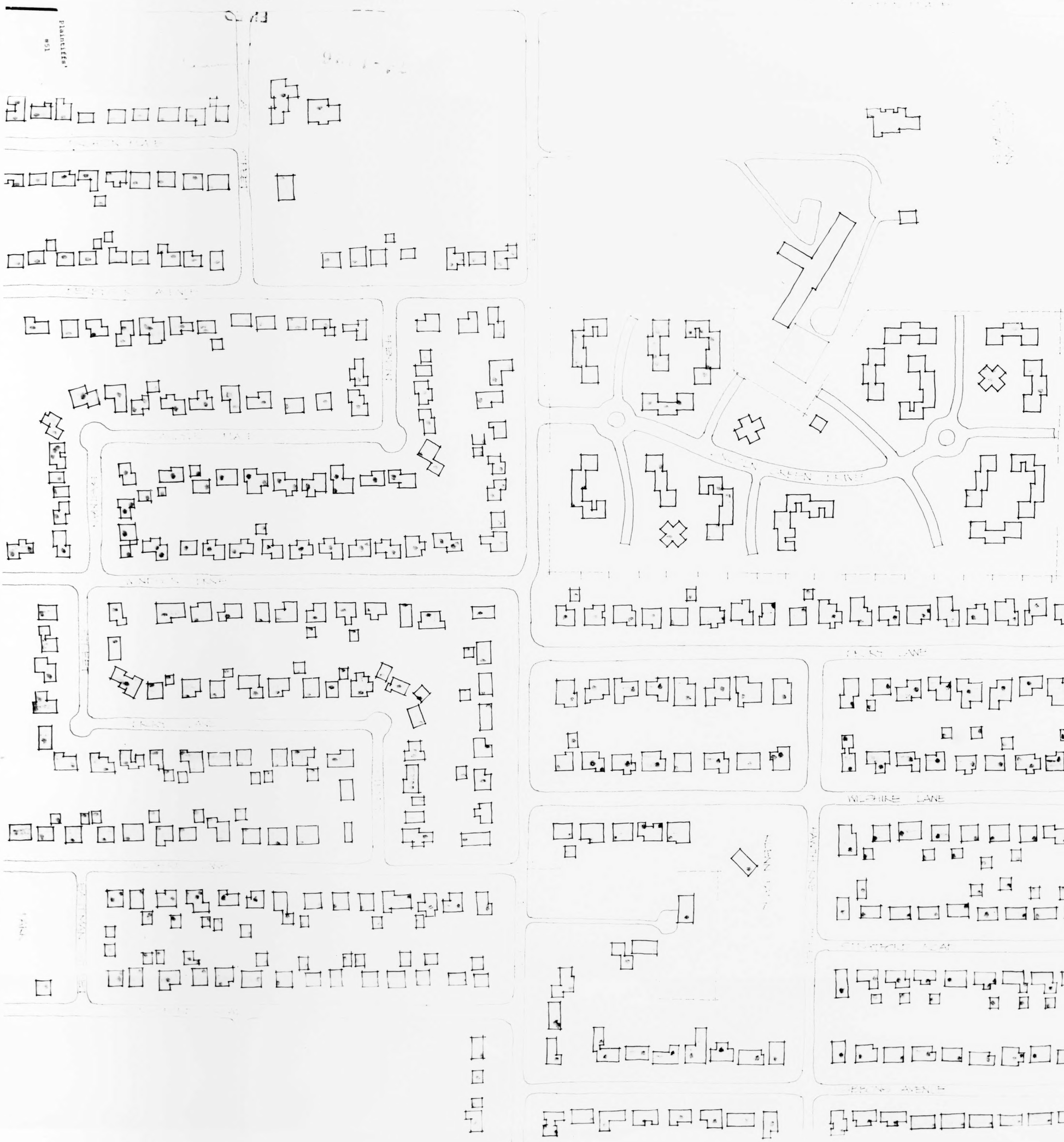
Defendants' Exhibit 11—
Requests for Multiple Family Zoning 118

Defendants' Exhibit 12—
Key Map for Multiple Family Zoning Area 119

Defendants' Exhibit 13—
Land Zoned but Not Developed for Multi-Family .. 120

Defendants' Exhibit 14—
Photographs of South Side of Euclid Avenue, West Side of Drury Lane, and West Side of Dryden Avenue 121-123


FREDERICK STREET
CASTON STREET

Plaintiffs' #51

VILLAGE OF ARLINGTON HEIGHTS

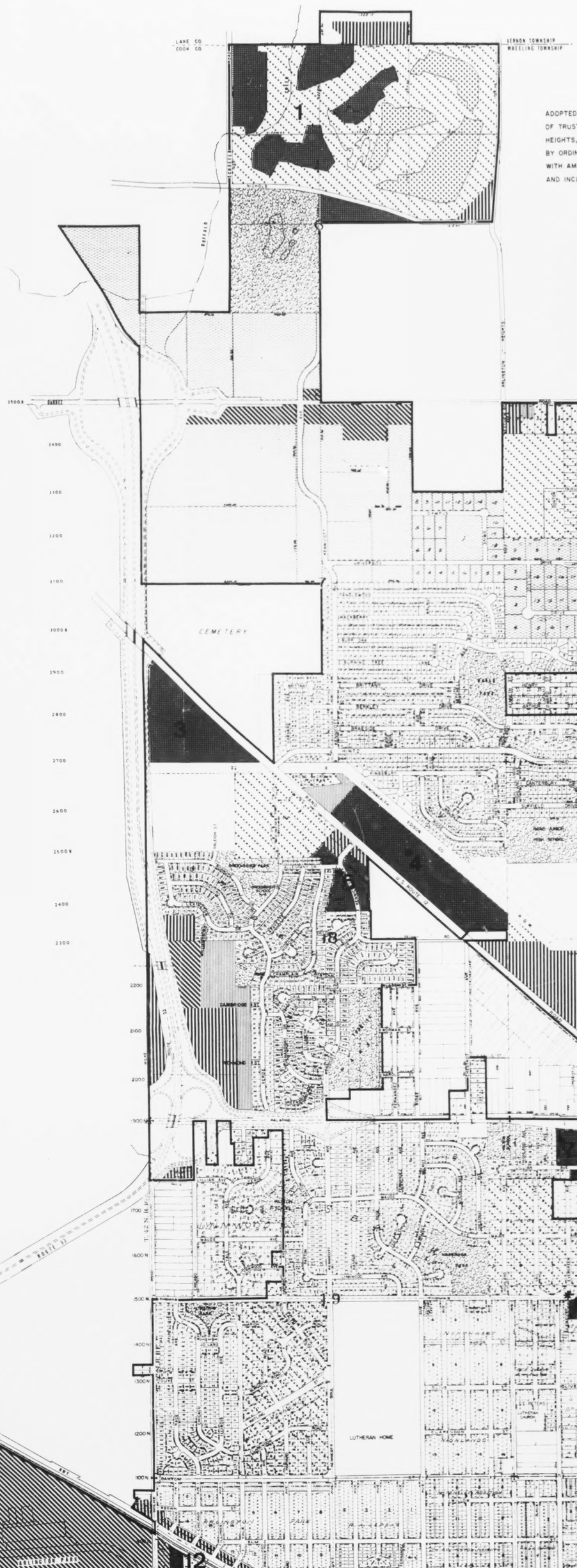
COOK COUNTY, ILLINOIS.

R-5 ZONING

NOTE

Numbers refer to report.

* Indicates adjacent single family homes.



ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS, COUNTY OF COOK, STATE OF ILLINOIS. BY ORDINANCE THE 21st DAY OF DECEMBER 1959 WITH AMENDMENTS AND MAP REVISIONS UP TO AND INCLUDING MARCH 31, 1970

ZONING MAP

SYMBOL		PERMISSIVE USE
	R-1	ONE-FAMILY DWELLING DISTRICT
	R-2	ONE-FAMILY DWELLING DISTRICT
	R-3	ONE FAMILY DWELLING DISTRICT
	R-4	TWO FAMILY DWELLING DISTRICT
	R-5	MULTIPLE-FAMILY DWELLING DISTRICT
	R-6	MULTIPLE-FAMILY DWELLING DISTRICT *
	I	INSTITUTIONAL DISTRICT
	B-1	BUSINESS DISTRICT LIMITED RETAIL
	B-2	GENERAL BUSINESS DISTRICT

SYMBOL		PERMISSIVE USE
	B-3	GENERAL SERVICE WHOLESALE & MOTOR VEHICLE DISTRICT
	B-4	LIMITED SERVICE DISTRICT
	B-5	CENTRAL BUSINESS DISTRICT
	O-R	OFFICE & RESEARCH DISTRICT
P	P	OFF STREET PARKING DISTRICT
	M-1	LIMITED MANUFACTURING DISTRICT
	M-2	CONDITIONAL MANUFACTURING DISTRICT
	M-1A	RESEARCH DEVELOPM'T AND MANUFACTURING DISTRICT
		SCHOOLS, PARKS AND OTHER PUBLIC USES

* REFER TO SECTION 11.7-2 OF THE ZONING REGULATIONS FOR "R-6" LOT AREA PER DWELLING UNIT BY LOCATION.

STREET INDEX

STREET NAME	DIRECTION	LOCATION	LOCATION
ADAMS AVE. (SEE DOUGLAS)	N-S	600 E	1600 N
ALEXANDRIA CT.	E-W	2200 N	1100 W
ALGONQUIN RD. (ILL. R 62)	NW/SE	2100 W	Continuous
ALLEGHANY DR.	E-W	2500 N	1100 W
ANNE CT.	N-S	2700 E	1650 N
APPLETREE LN.	E-W	2300 N	900 E
ARLINGTON HTS. RD. (FORMERLY STATE RD.)	N-S	200 E	Continuous
ARTHUR AVE.	N-S	1400 E	600 S
AVINGTON CT.	E-W	2700 N	*OP E
AVON LN.	E-W	1700 N	1900 E
BANBURY DR.	N-S	600 E	500 S
BELLATRIX DR.	E-W	*OP N-S	2900 E
BELMONT AVE.	N-S	400 E	Intermittent
BERKLEY DR.	E-W	2500 N	1200 W
BEVERLY LN.	N-S	550 E	Intermittent
BIRCHWOOD LN.	N-S	2200 E	2100 N
BRADFORD DR.	N-S	750 E	2500 N
BRADLEY PL.	E-W	2700 N	100 E
BRANDENBERRY CT.	E-W	1200 N	2500 E
BRIAR PL.	E-W	2950 N	900 E
BRITANNIA LN.	N-S	1200 E	2650 S
BRIGHTON PL.	N-S	1100 E	Intermittent
BRISTOL LN.	N-S	600 E	500 S
BRITTANY TR.	E-W	2450 N	400 W
BROOK DR.	E-W	2650 S	600 E
BRUMMOND DR.	E-W	2500 N	1000 E
BRUNN CT.	E-W	1000 N	1600 W
BUFFALO GROVE ROAD	N-S	1400 E	1900 N
BURNETTE RD.	E-W	1100 N	1900 W
BUSKER DR.	N-S	900 E	2100 N
BUSKIRK PARK LN.	E-W	1900 N	600 W
BUTTERCUP DR.	E-W	2950 N	Intermittent
BUTTON PL.	N-S	500 E	Intermittent
BYRON RD.	N-S	1500 E	Intermittent
CAMBRIDGE DR.	E-W	2700 N	1300 W
CAMBRIDGE ST.	E-W	2200 N	1300 W
CAMP McDONALD RD.	E-W	1100 N	2600 E
CAMPBELL ST.	E-W	N-S Base	Intermittent
CAMPUS DR.	E-W	3200 N	100 W
CANTERBURY DR.	E-W	2650 N	*OP
CARLYLE PL.	N-S	1100 E	Intermittent
CATINO ST.	E-W	650 S	500 W
CEDAR CT.	E-W	1400 S	*OP E-W
CEDAR GLEN DR.	N-S	1000 E	2400 S
CENTER LN.	N-S	2100 E	1250 N
CENTRAL RD.	E-W	1000 S	Continuous
CHAMPLAIN ST.	N-S	1000 W	2400 N
CHATHAM PL.	N-S	1300 E	100 S
CHERRY HILL DR.	N-S	2700 N	1500 W
CHERRY LN.	E-W	2150 N	500 E
CHESTERFIELD DR.	N-S	200 W	1700 S
CHESTNUT AVE.	N-S	100 W	Intermittent
CHICAGO AVE.	N-S	1630 W	Intermittent
CIRCLE HILL DR.	E-W	2150 N	400 E
CLARENCE AVE.	N-S	1200 E	1800 N
CLARENDON AVE. & ST.	E-W	1200 N	Intermittent
CLEARWATER DR.	N-S	700 E	2600 S
CLEVELAND AVE.	N-S	1200 E	600 S
COLLEGE DR.	E-W	1000 N	*OP
CONCORD DR.	E-W	2400 N	1500 W
COTTONWOOD LN.	E-W	350 N	1300 W
CUMMELL TR.	E-W	1700 S	300 E
CRABTREE DR.	NW/SE	2150 N	1000 E
CRESTWOOD DR.	E-W	2200 N	700 E
CYPRESS ST.	E-W	1200 W	Intermittent
DALE AVE.	N-S	2630 E	Intermittent
DAVID ST.	NW/SE	100 S	Intermittent
DEBSTER ST.	E-W	2700 S	1500 E
DERBYSHIRE AVE. & LN.	N-S	1200 E	Intermittent
DONALD AVE.	N-S	2130 E	Intermittent
DOROTHY AVE.	N-S	700 E	1750 N
DORSET ST.	E-W	1350 N	2700 E
DOUGLAS AVE.	N-S	600 E	Intermittent
DOVER LN.	N-S	1525 N	1700 E
DRURY LN.	N-S	1500 E	Intermittent
DUNTON AVE. & PL.	N-S	1000 E	Intermittent
DUNDEE RD.	E-W	3500 N	Continuous
DUNTON AVE.	N-S	*OP E-W	Intermittent
DWYER AVE.	N-S	1200 W	Intermittent
EASTMAN ST.	E-W	300 N	Intermittent
EASTWOOD ST.	E-W	700 E	2000 N
EDWARD ST.	N-S	*OP E.	2900 N
ELIZABETH DR.	N-S	1060 W	2100 N
ELK GROVE RD.	N-S	1800 W	2000 S
ELM LN.	N-S	2700 N	850 E
ELMWOOD CIRCLE	E-W	900 N	Intermittent
EMERSON LN.	E-W	1950 N	2000 E
EMERSON ST.	N-S	800 E	2400 S
ENGLISH ST.	E-W	1600 W	300 E
ERMAN AVE.	N-S	2800 E	1600 N
ESCUELA AVE.	E-W	600 N	Continuous
EVANSTON AVE.	N-S	2500 E	Intermittent
EVERGREEN AVE.	N-S	100 E	Intermittent
EVERGREEN TERR.	N-S	1500 E	2000 N

74-1326

FILED

APR 17 1974

H. STUART CUNNINGHAM

o'clock

CLERK

DOCKETED

FILED

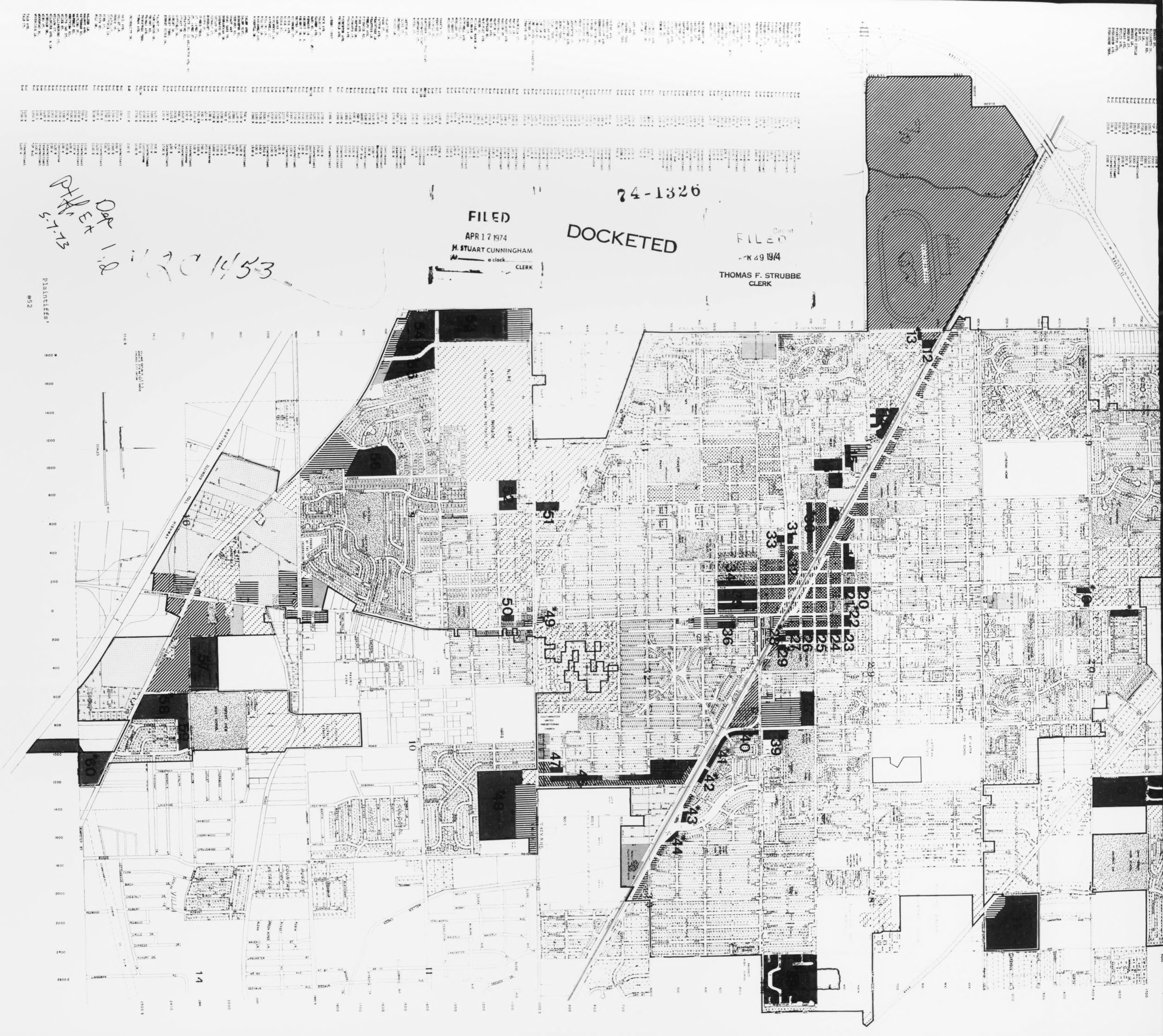
APR 29 1974

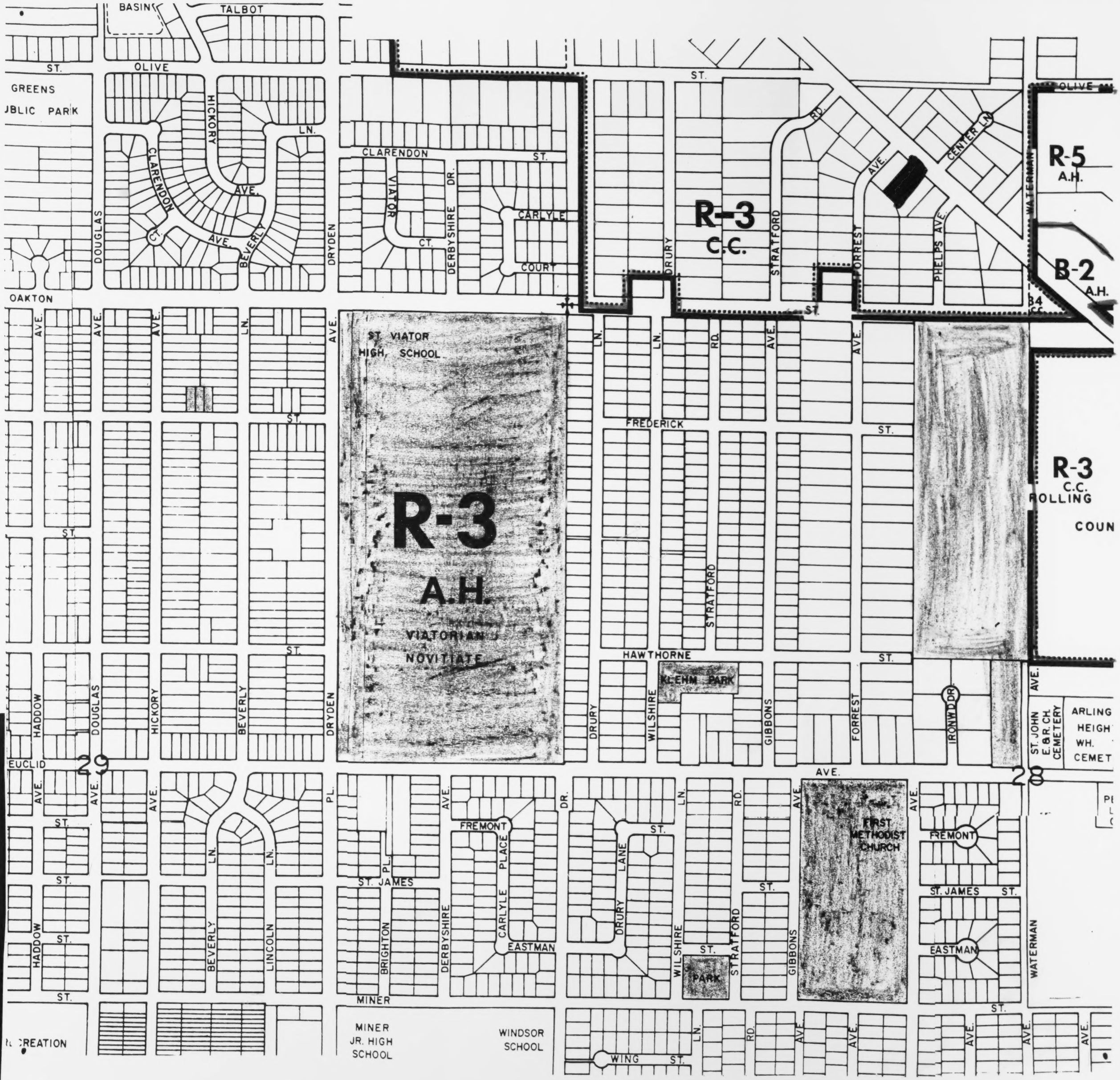
THOMAS F. STRUBBE
CLERK

Dep Ex 1-8
Pltfs.
5-7-73

1320453

Plaintiffs'
#52





SINGLE FAMILY

MULTI-FAMILY

BUSINESS

INSTITUTIONAL

SCHOOLS & PARKS

EXISTING LAND USE

EXISTING ZONING

APPENDIX E

E1

DEFENDANT'S EXHIBIT NO. 1

18

NORTH

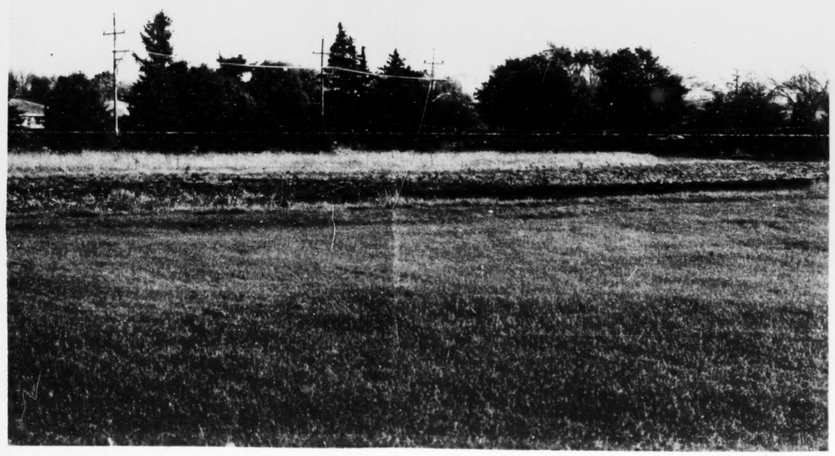
19

NORTH

20

SOUTHEAST

24



SOUTHEAST

25

SOUTH

26

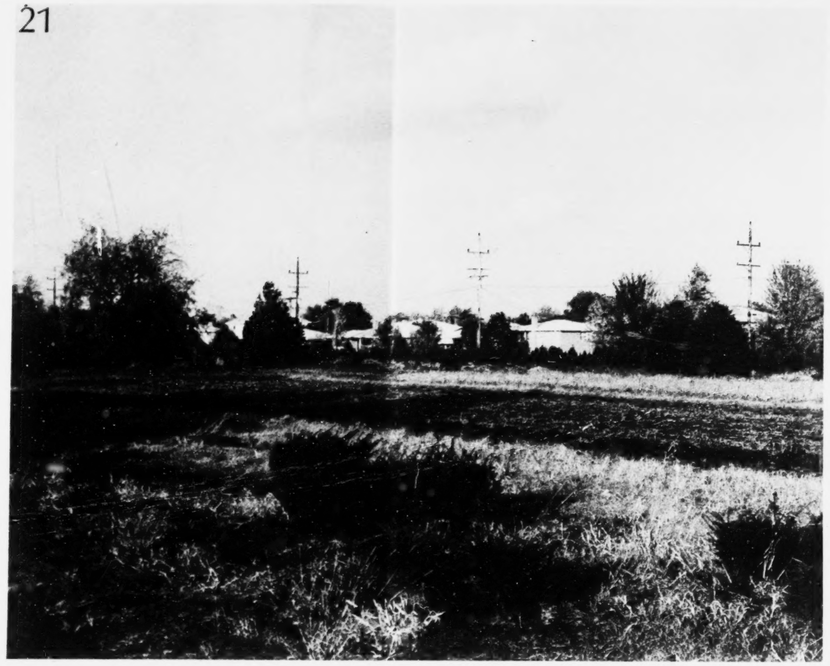
EAST

APPENDIX F

F1

DEFENDANT'S EXHIBIT NO. 2

21



NORTHEAST

22

SOUTH

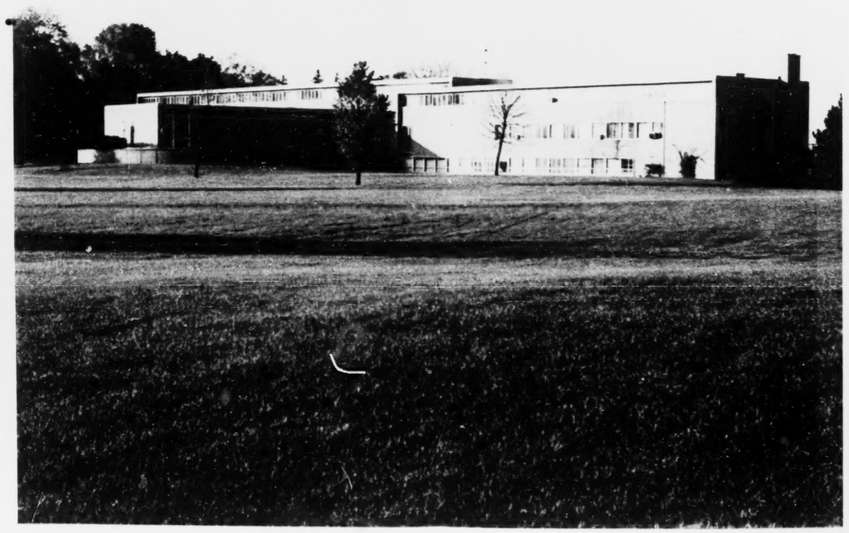
23

EAST

27

EAST

28



NORTHWEST

29

EAST

F2

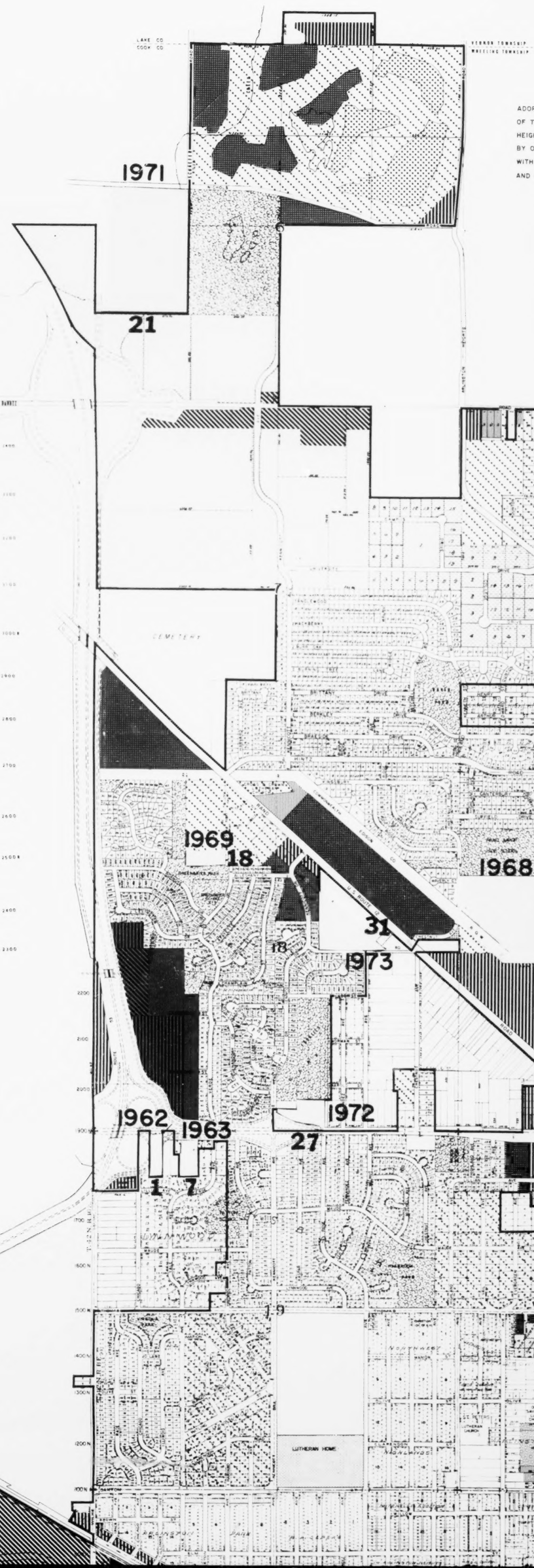
DEFENDANT'S EXHIBIT NO. 2

Ex 11.

VILLAGE OF ARLINGTON HEIGHTS

COOK COUNTY, ILLINOIS.

ZONING MAP

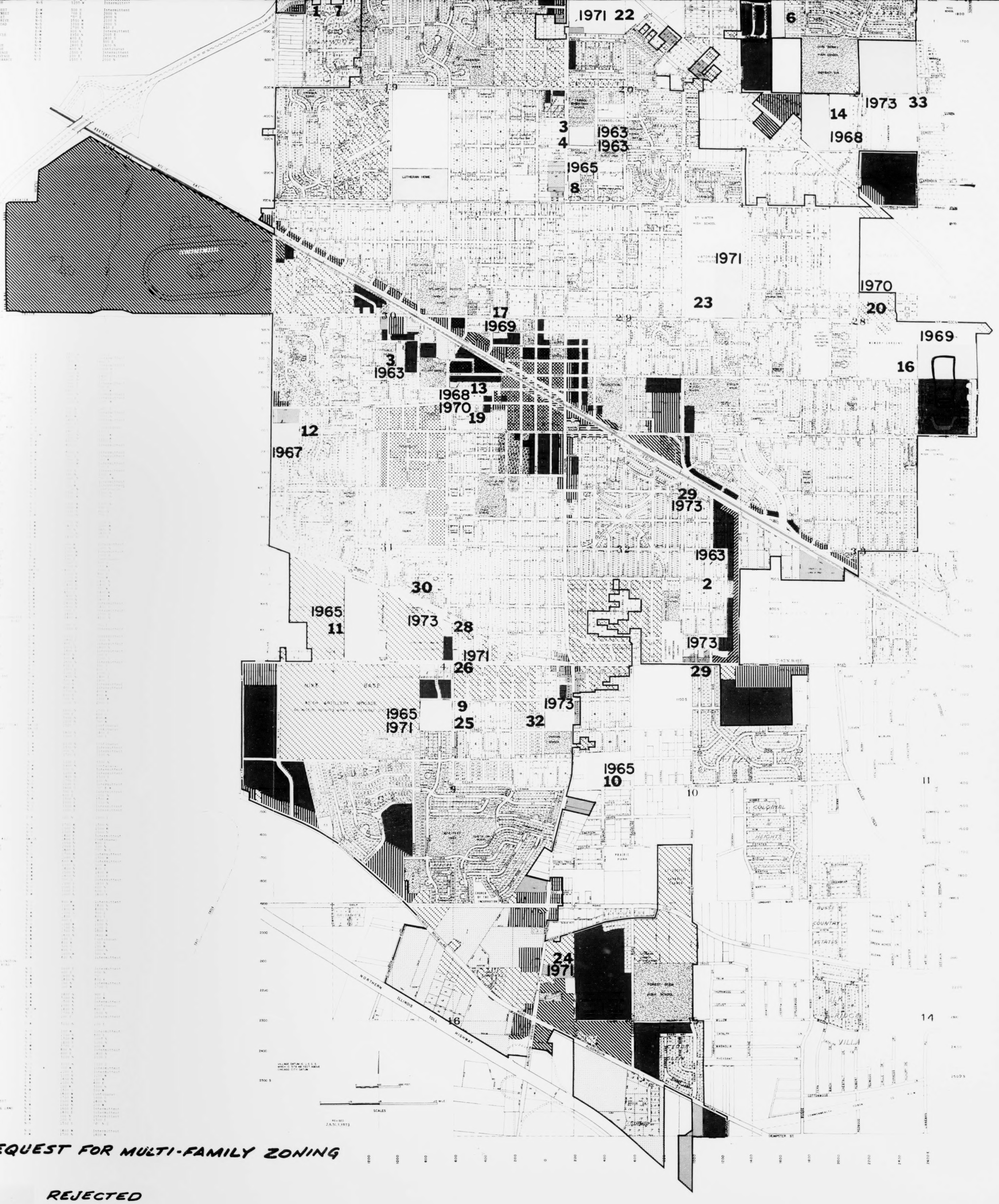


ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS, COUNTY OF COOK, STATE OF ILLINOIS, BY ORDINANCE THE 21st DAY OF DECEMBER 1959 WITH AMENDMENTS AND MAP REVISIONS UP TO AND INCLUDING JANUARY 1, 1973

SYMBOL		PERMISSIVE USE
	R-1	ONE-FAMILY DWELLING DISTRICT
	R-2	ONE-FAMILY DWELLING DISTRICT
	R-3	ONE FAMILY DWELLING DISTRICT
	R-4	TWO FAMILY DWELLING DISTRICT
	R-5	MULTIPLE-FAMILY DWELLING DISTRICT
	R-6	MULTIPLE-FAMILY DWELLING DISTRICT *
	I	INSTITUTIONAL DISTRICT
	B-1	BUSINESS DISTRICT LIMITED RETAIL
	B-2	GENERAL BUSINESS DISTRICT

SYMBOL		PERMISSIVE USE
	B-3	GENERAL SERVICE WHOLESALE & MOTOR VEHICLE DISTRICT
	B-4	LIMITED SERVICE DISTRICT
	B-5	CENTRAL BUSINESS DISTRICT
	O-R	OFFICE & RESEARCH DISTRICT
P	P	OFF STREET PARKING DISTRICT
	M-1	LIMITED MANUFACTURING DISTRICT
	M-2	CONDITIONAL MANUFACTURING DISTRICT
	M-1A	RESEARCH DEVELOPM'T AND MANUFACTURING DISTRICT
		SCHOOLS, PARKS AND OTHER PUBLIC USES

* REFER TO SECTION 11.7-2 OF THE ZONING REGULATIONS FOR "R-6" LOT AREA PER DWELLING UNIT BY LOCATION.



REQUEST FOR MULTI-FAMILY ZONING

REJECTED

APPROVED

Ex. 12

VILLAGE OF ARLINGTON HEIGHTS

COOK COUNTY, ILLINOIS.

ZONING MAP

SYMBOL		PERMISSIVE USE
	R-1	ONE-FAMILY DWELLING DISTRICT
	R-2	ONE-FAMILY DWELLING DISTRICT
	R-3	ONE FAMILY DWELLING DISTRICT
	R-4	TWO FAMILY DWELLING DISTRICT
	R-5	MULTIPLE-FAMILY DWELLING DISTRICT
	R-6	MULTIPLE-FAMILY DWELLING DISTRICT *
	I	INSTITUTIONAL DISTRICT
	B-1	BUSINESS DISTRICT LIMITED RETAIL
	B-2	GENERAL BUSINESS DISTRICT

SYMBOL		PERMISSIVE USE
	B-3	GENERAL SERVICE WHOLESALE & MOTOR VEHICLE DISTRICT
	B-4	LIMITED SERVICE DISTRICT
	B-5	CENTRAL BUSINESS DISTRICT
	O-R	OFFICE & RESEARCH DISTRICT
P	P	OFF STREET PARKING DISTRICT
	M-1	LIMITED MANUFACTURING DISTRICT
	M-2	CONDITIONAL MANUFACTURING DISTRICT
	M-1A	RESEARCH DEVELOPM'T AND MANUFACTURING DISTRICT
		SCHOOLS, PARKS AND OTHER PUBLIC USES

* REFER TO SECTION 11.7-2 OF THE ZONING REGULATIONS FOR "R-6" LOT AREA PER DWELLING UNIT BY LOCATION.

ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS, COUNTY OF COOK, STATE OF ILLINOIS, BY ORDINANCE THE 21ST DAY OF DECEMBER 1959 WITH AMENDMENTS AND MAP REVISIONS UP TO AND INCLUDING JANUARY 1, 1973

VILLAGE OF ARLINGTON HEIGHTS

MUNICIPAL BUILDING
33 S. ARLINGTON HTS. RD.

POLICE DEPARTMENT
33 S. ARLINGTON HTS. RD.

PUBLIC LIBRARY
500 N. DUNTON AVE.

FIRE STATIONS
33 S. ARLINGTON HTS. RD.
2000 S. ARLINGTON HTS. RD.
709 N. ARLINGTON HTS. RD.
3030 N. ARLINGTON HTS. RD.

MUNICIPAL GARAGE
222 N. RIDGE AVENUE

U.S. POST OFFICE
105 W. EIGHTH AVENUE

CHURCHES

CROSS & CROWN LUTHERAN CHURCH
1522 W. RAND ROAD
EVANGELICAL FREE CHURCH
1114 N. BELMONT AVENUE
ARLINGTON COUNTRYSIDE CHAPEL
916 E. HINTZ ROAD
CONGREGATIONAL CHURCH OF A. H.
1901 W. KIRCHHOFF ROAD
CHRISTIAN CHURCH OF A. H.
115 W. THOMAS STREET
CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS
1255 N. WINDSOR DRIVE
FAITH EVANGELICAL LUTHERAN
431 S. ARLINGTON HTS. RD.
FIRST PRESBYTERIAN CHURCH OF A.H.
512 N. DUNTON AVENUE
FIRST BAPTIST CHURCH
121 W. CAMPBELL STREET
ST. JAMES CATHOLIC CHURCH
620 N. ARLINGTON HTS. RD.
ST. CECELIA'S CATHOLIC CHURCH
1818 S. MEIER ROAD

FIRST METHODIST CHURCH OF A. H.
1905 E. EUCLID AVENUE
FIRST CHURCH OF CHRIST SCIENTIST
401 S. EVERGREEN AVENUE
LUTHERAN CHURCH OF THE CROSS
2525 S. GOEBBERT ROAD
OUR SAVIOR'S EVANGELICAL LUTHERAN
1234 N. ARLINGTON HTS. RD.
OUR LADY OF THE WAYSIDE CATHOLIC
432 S. MITCHELL AVENUE
CHURCH OF THE INCARNATION
550 W. GOLF ROAD
SOUTHMINSTER UNITED PRESBYTERIAN
916 E. CENTRAL ROAD
ST. EDNA'S CATHOLIC CHURCH
2525 N. ARLINGTON HTS. RD.
ST. JOHN UNITED CHURCH OF CHRIST
314 N. EVERGREEN AVENUE
ST. PETER LUTHERAN CHURCH
111 W. OLIVE STREET
ST. SIMON'S EPISCOPAL CHURCH
719 W. KIRCHHOFF ROAD
UNITY NORTHWEST CHURCH
2801 E. PALATINE ROAD

PUBLIC SCHOOLS

A. H. TOWNSHIP HIGH SCHOOL
502 W. EUCLID AVENUE
BERKELEY SCHOOL
2501 N. CHESTNUT AVENUE
FOREST VIEW HIGH SCHOOL
2121 S. GOEBBERT ROAD
JOHN HERSEY HIGH SCHOOL
1900 E. THOMAS STREET
PROSPECT HIGH SCHOOL
801 W. KINGSTON ROAD
MAC ARTHUR JR. HIGH SCHOOL
700 N. SCHOENBECK RD.
MINER JR. HIGH SCHOOL
1701 E. MINER STREET
SOUTH JR. HIGH SCHOOL
514 S. HIGHLAND AVENUE
THOMAS JR. HIGH SCHOOL
105 E. THOMAS STREET
RAND JR. HIGH SCHOOL
2550 N. ARLINGTON HTS. RD.
DRYDEN SCHOOL
722 S. DRYDEN AVENUE
PATTON SCHOOL
1616 N. PATTON AVENUE
RIDGE SCHOOL
800 N. FERNANDEZ AVENUE
ROSS SCHOOL
700 N. SCHOENBECK RD., P.H.
JAMES WHITCOMB RILEY SCHOOL
2955 N. WINDSOR DRIVE

SULLIVAN SCHOOL
700 N. SCHOENBECK RD., P.H.
DUNTON SCHOOL
1220 S. DUNTON AVENUE
GREENBRIER SCHOOL
2330 N. VERDE DRIVE
IVY HILL SCHOOL
2211 N. BURKE DRIVE
DWYER SCHOOL
500 S. DWYER AVENUE
JULIETTE LOW SCHOOL
1530 S. HIGHLAND AVENUE
KENSINGTON SCHOOL
201 S. EVANSTON AVENUE
NORTH SCHOOL
410 N. ARLINGTON HTS. RD.
OLIVE SCHOOL
303 E. OLIVE STREET
EDGAR ALLAN POE SCHOOL
2800 N. HIGHLAND AVENUE
PARK SCHOOL
306 W. PARK STREET
WESTGATE SCHOOL
1211 W. GROVE STREET
WILSON SCHOOL
15 E. PALATINE ROAD
WINDSOR SCHOOL
1315 E. MINER STREET

PAROCHIAL SCHOOLS

ST. JAMES CATHOLIC SCHOOL
821 N. ARLINGTON HTS. RD.
ST. JAMES JR. HIGH SCHOOL
808 N. ARLINGTON HTS. RD.
ST. PETER LUTHERAN SCHOOL
111 W. OLIVE STREET
ST. VIATOR'S HIGH SCHOOL
1213 E. DAKTON STREET

OUR LADY OF THE WAYSIDE SCHOOL
432 S. MITCHELL AVENUE
OUR LADY OF THE WAYSIDE JR. HIGH
455 S. RIDGE AVENUE
VIATORIAN NOVITIATE
1212 E. EUCLID AVENUE

HOSPITAL

NORTHWEST COMMUNITY HOSPITAL
800 W. CENTRAL ROAD

U. S. ARMY HEADQUARTERS

45TH ARTILLERY BRIGADE
WILKE & CENTRAL ROAD

ARLINGTON PARK

ARLINGTON PARK TOWERS
3400 W. EUCLID AVENUE
ARLINGTON PARK RACE TRACK
2200 W. EUCLID AVENUE

ARLINGTON PARK THEATRE
3400 W. EUCLID AVENUE

PARKS

WAR MEMORIAL PARK
FREMONT & CHESTNUT AVENUES

FIELD HOUSES & SWIMMING POOLS

RECREATION PARK
500 E. MINER STREET
FRONTIER PARK
1933 N. KENNICOTT DRIVE
OLYMPIC PARK & POOL
660 N. RIDGE AVENUE

PIONEER PARK
500 S. FERNANDEZ AVENUE
HERITAGE PARK
506 W. VICTORIA LANE
CAMELOT PARK
1005 E. SUFFIELD DRIVE

PLAYGROUND APPARATUS

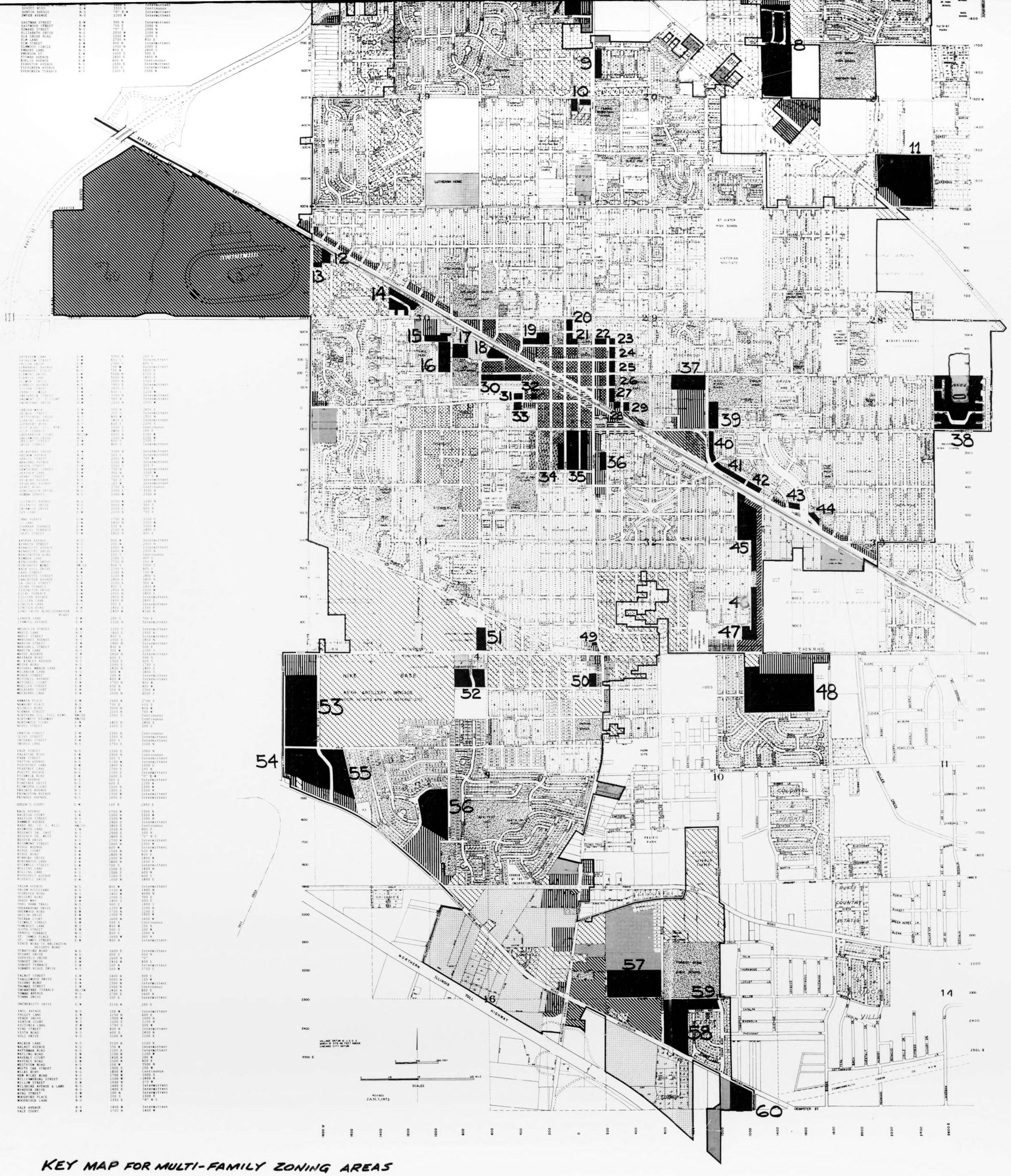
BANTA PARK
PHELPS-WATERMAN
BERKECKER PARK
WILSHIRE-STRATFORD-EASTMAN MINER
GREENBRIER PARK
VERDE-ROANOKE
DRYDEN PARK
700 S. DRYDEN PLACE
EVERGREEN PARK
DRIVE-GIBBONS-FORREST
GREENS PARK
OLIVE-DOUGLAS
WESTGATE PARK
REUTER ST., JAMES
RAVEN PARK
BERKLEY HIGHLAND
PRAIRIE PARK
BELMONT-DOUGLAS-FOSTER
J. D. PLENTIE PARK
MULBERRY-BIRCHWOOD

HASBROOK PARK
333 W. MAUDE STREET
HICKORY MEADOWS PARK
HICKORY-MARION
KLEHM PARK
HAWTHORNE-WILSHIRE
SOUTH PARK
SOUTH-GROVE-HIGHLAND-VAIL
VIRGINIA PARK
THOMAS-CHICAGO
VOLZ PARK
ST. JAMES-KENNICOTT
CAREFREE PARK
BELMONT-DOUGLAS
FOREST VIEW PARK
GOEBBERT-FALCON
PATRIOT PARK
1815 N. DALE AVENUE

CHICAGO & NORTHWESTERN RATEROAD DEPOT
NORTHWEST HIGHWAY BETWEEN EVERGREEN & DUNTON

STREET GUIDE

STREET NAME	DIRECTION	SITUATED	LOCATION
AGNES AVE. (SEE DOUGLAS)	N-S	600 E	1600 N
ALEXANDRIA ST.	E-W	2200 N	1100 W
ALGONQUIN RD. (ILL. R. #62)	NW/SE	2500 S	Continuous
ALLEGHANY DR.	E-W	2500 N	1100 W
ALLEN LANE	N-S	1600 W	550 S
ANNE CT.	N-S	2700 E	1450 N
APPLETREE LANE	E-W	2500 N	900 E
ARLINGTON HEIGHTS RD. (FORMERLY STATE RD.)	N-S	200 E	Continuous
ARTHUR AVENUE	N-S	1400 E	600 S
ARTHUR STREET	E-W	2800 N	"0" E
AVON LANE	E-W	1700 N	1900 E
BANBURY DRIVE	N-S	600 E	500 S
BEL AIRE DRIVE	E-W	"0" N-S	2800 E
BELMONT AVENUE	N-S	400 E	Intermittent
BERKLEY DRIVE	E-W	2800 N	400 W
BEST DRIVE	N-S	1500 E	3000 N
BEVERLY LANE	N-S	800 E	Intermittent
BIRCHWOOD LANE	N-S	2200 E	2100 N
BRADFORD DRIVE	N-S	750 E	2500 N
BRAESIDE DRIVE	E-W	2750 N	400 W
BRANDENBERRY COURT	E-W	1200 N	2400 E
BRIAR PLACE	E-W	2050 N	900 E
BRIARWOOD LANE	N-S	1200 E	2600 S
BRIGHTON PLACE	N-S	1100 E	Intermittent
BRISTOL LANE	N-S	600 E	500 S
BRITTANY DRIVE	E-W	2850 N	400 W
BROOK DRIVE	E-W	2600 S	600 E
BROOKWOOD DRIVE	E-W	2500 N	1000 E
BROWN STREET	E-W	1000 N	1600 W
BUFFALO GROVE ROAD	N-S	1400 E	1900 N
BURGUNDY ROAD	E-W	1300 N	1200 W
BURKE DRIVE	N-S	900 E	2100 N
BURNING TREE LANE	E-W	2900 N	600 W
BURR OAK DRIVE	E-W	2900 N	Intermittent
BURTON PLACE	N-S	500 E	Intermittent
BUSSE ROAD	N-S	1800 E	Intermittent
BUTTERNUT LANE	E-W	200 N	1500 W
CAMBRIDGE STREET	E-W	2200 N	1300 W
CAMP MC DONALD ROAD	E-W	1100 N	2600 E
CAMPBELL STREET	E-W	N-S Base	Intermittent
CAMPUS DRIVE	E-W	3100 N	300 W
CANTERBURY DRIVE	E-W	2650 N	"0"
CARLYLE PLACE	N-S	1300 E	Intermittent
CARRIAGE WAY DRIVE	N-S	900 E	3500 N
CATINO STREET	E-W	650 S	800 W
CEDAR STREET	E-W	1400 S	"0" E-W
CEDAR GLEN DRIVE	N-S	1000 E	2400 S
CENTER LANE	N-S	2100 E	1250 N
CENTRAL ROAD	E-W	1000 S	Continuous
CHAMPLAIN STREET	N-S	1000 W	2400 N
CHARLES STREET	E-W	1700 N	600 E
CHATHAM PLACE	N-S	1300 E	300 S
CHERRY HILL DRIVE	N-S	2000 N	1500 E
CHERRY LANE	E-W	2150 N	800 E
CHESTERFIELD DRIVE	N-S	1700 S	1700 W
CHESTNUT AVENUE	N-S	300 W	Intermittent
CHICAGO AVENUE	N-S	1600 W	Intermittent
CIRCLE HILL DRIVE	E-W	2150 N	400 E
CLARENCE AVENUE	N-S	1200 E	1800 N
CLARENDON AVE. & STREET	E-W	1200 N	Intermittent
CLEARBROOK DRIVE	N-S	700 E	2600 S
CLEVELAND AVENUE	N-S	1200 E	600 S
COLLEGE DRIVE	E-W	3000 N	"0"
CONCORD DRIVE	E-W	2400 N	1500 W
COTTONWOOD LANE	E-W	550 N	1300 W
COUNCIL TRAIL	E-W	1700 S	300 E
CRABTREE DRIVE	NW/SE	2450 N	1000 E
CRESTWOOD DRIVE	E-W	2200 N	700 E
CYPRESS STREET	E-W	1200 W-E	Intermittent
DALE AVENUE	N-S	2600 E	Intermittent
DANIELS COURT	N-S	800 E	3400 N
DAVIS STREET	NW/SE	100 S	Intermittent
DEMPSTER STREET	E-W	2600 S	1800 E
DERBYSHIRE LANE & AVE.	N-S	1200 E	Intermittent
DONALD AVENUE	N-S	2300 E	Intermittent
DOROTHY AVENUE	N-S	700 E	1750 N
DORSET STREET	E-W	1350 N	2700 E
DOUGLAS AVENUE	N-S	600 E	Intermittent
DOVER LANE	N-S	1825 N	1700 E
DRURY LANE	N-S	1500 E	Intermittent
DRYDEN AVENUE & PLACE	N-S	1000 E	Intermittent
DUNDEE ROAD	E-W	3500 N	Continuous
DUNTON AVENUE	N-S	"0" E-W	Intermittent
DWYER AVENUE	N-S	1200 W	Intermittent
EASTMAN STREET	E-W	300 N	Intermittent
EASTWOOD STREET	E-W	700 E	2000 N
EDWARD STREET	N-S	"0" E	2900 N
ELIZABETH DRIVE	N-S	1050 W	2100 N
ELK GROVE ROAD	N-S	1000 W	2000 S
ELM LANE	N-S	2700 N	850 E
ELM STREET	E-W	900 N	Intermittent
ELMWOOD CIRCLE	E-W	1950 N	2000 E
EMERS LANE	N-S	800 E	2400 S
EMERSON ST.	E-W	1600 S	300 E
ETOWAH AVENUE	N-S	2800 E	1600 N
EUCLID AVENUE	E-W	600 N	Continuous
EVANSTON AVENUE	N-S	2500 E	Intermittent
EVERGREEN AVENUE	N-S	100 E	Intermittent
EVERGREEN TERRACE	N-S	1500 E	2000 N



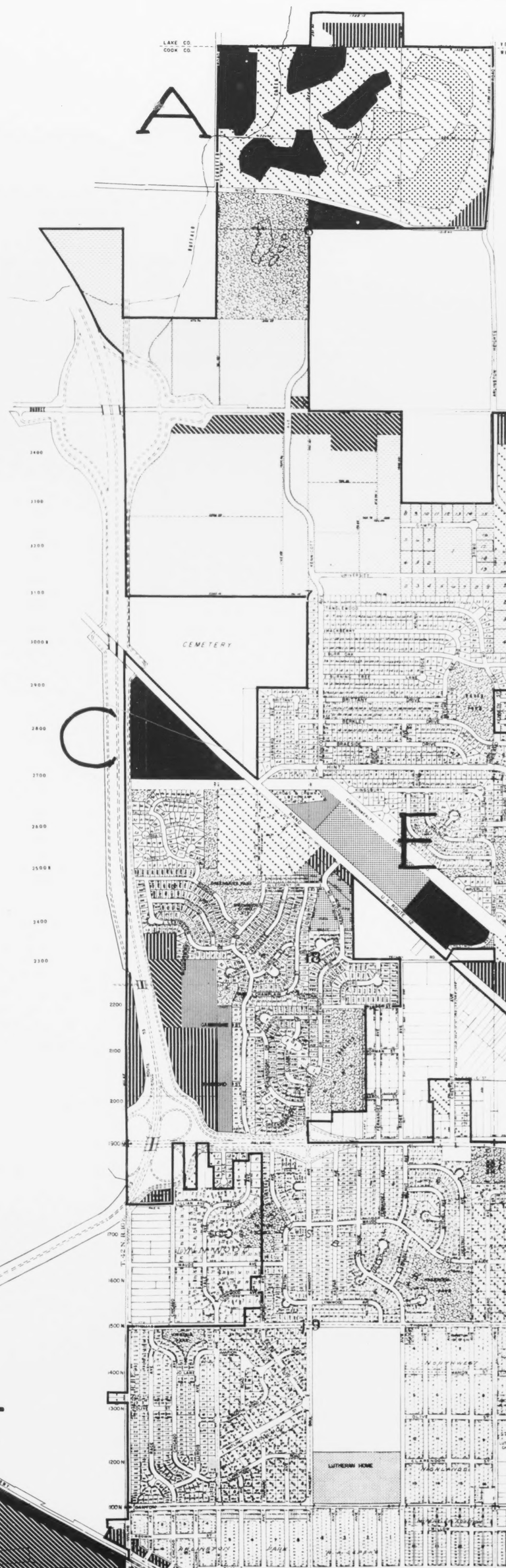
KEY MAP FOR MULTI-FAMILY ZONING AREAS IN ARLINGTON HEIGHTS, ILL.

Ex. 13

VILLAGE OF ARLINGTON HEIGHTS

COOK COUNTY, ILLINOIS.

ZONING MAP



ADOPTED BY THE PRESIDENT AND THE BOARD OF TRUSTEES OF THE VILLAGE OF ARLINGTON HEIGHTS, COUNTY OF COOK, STATE OF ILLINOIS, BY ORDINANCE THE 21st DAY OF DECEMBER 1959 WITH AMENDMENTS AND MAP REVISIONS UP TO AND INCLUDING JANUARY 1, 1973

SYMBOL		PERMISSIVE USE
	R-1	ONE-FAMILY DWELLING DISTRICT
	R-2	ONE-FAMILY DWELLING DISTRICT
	R-3	ONE FAMILY DWELLING DISTRICT
	R-4	TWO FAMILY DWELLING DISTRICT
	R-5	MULTIPLE-FAMILY DWELLING DISTRICT
	R-6	MULTIPLE-FAMILY DWELLING DISTRICT *
	I	INSTITUTIONAL DISTRICT
	B-1	BUSINESS DISTRICT LIMITED RETAIL
	B-2	GENERAL BUSINESS DISTRICT

SYMBOL		PERMISSIVE USE
	B-3	GENERAL SERVICE WHOLESALE & MOTOR VEHICLE DISTRICT
	B-4	LIMITED SERVICE DISTRICT
	B-5	CENTRAL BUSINESS DISTRICT
	O-R	OFFICE & RESEARCH DISTRICT
P	P	OFF STREET PARKING DISTRICT
	M-1	LIMITED MANUFACTURING DISTRICT
	M-2	CONDITIONAL MANUFACTURING DISTRICT
	M-1A	RESEARCH DEVELOPM'T AND MANUFACTURING DISTRICT
		SCHOOLS, PARKS AND OTHER PUBLIC USES

* REFER TO SECTION 11.7-2 OF THE ZONING REGULATIONS FOR "R-6" LOT AREA PER DWELLING UNIT BY LOCATION.

VILLAGE OF ARLINGTON HEIGHTS

MUNICIPAL BUILDING
33 S. ARLINGTON HTS. RD.

POLICE DEPARTMENT
33 S. ARLINGTON HTS. RD.

PUBLIC LIBRARY
500 N. DUNTON AVE.

FIRE STATIONS
33 S. ARLINGTON HTS. RD.
2000 S. ARLINGTON HTS. RD.
709 N. ARLINGTON HTS. RD.
3030 N. ARLINGTON HTS. RD.

MUNICIPAL GARAGE
410 N. RIDGE AVENUE

U. S. POST OFFICE
205 W. EUCLID AVENUE

CHURCHES

CROSS & CROWN LUTHERAN CHURCH
1122 W. RAND ROAD
EVANGELICAL FREE CHURCH
1214 N. BELMONT AVENUE
ARLINGTON COUNTRYSIDE CHAPEL
916 E. HINTZ ROAD
CONGREGATIONAL CHURCH OF A. H.
1910 W. KIRCHOFF ROAD
CHRISTIAN CHURCH OF A. H.
333 W. THOMAS STREET
CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS
2055 S. WINDSOR DRIVE
FAITH EVANGELICAL LUTHERAN
431 S. ARLINGTON HTS. RD.
FIRST PRESBYTERIAN CHURCH OF A.H.
101 S. DUNTON AVENUE
FIRST BAPTIST CHURCH
1231 W. CAMPBELL STREET
ST. JAMES CATHOLIC CHURCH
821 N. ARLINGTON HTS. RD.
ST. CECELIA'S CATHOLIC CHURCH
1818 S. MEIER ROAD

FIRST METHODIST CHURCH OF A. H.
1905 E. EUCLID AVENUE
FIRST CHURCH OF CHRIST SCIENTIST
401 S. EVERGREEN AVENUE
LUTHERAN CHURCH OF THE CROSS
2177 S. GILBERT ROAD
OUR SAVIOR'S EVANGELICAL LUTHERAN
1234 W. ARLINGTON HTS. RD.
OUR LADY OF THE WAYSIDE CATHOLIC
432 S. MITCHELL AVENUE
CHURCH OF THE INCARNATION
330 W. GOLF ROAD
SOUTHMINSTER UNITED PRESBYTERIAN
916 E. CENTRAL ROAD
ST. EDNA'S CATHOLIC CHURCH
2525 N. ARLINGTON HTS. RD.
ST. JOHN UNITED CHURCH OF CHRIST
514 N. EVERGREEN AVENUE
ST. PETER LUTHERAN CHURCH
111 W. OLIVE STREET
ST. SIMON'S EPISCOPAL CHURCH
717 W. KIRCHOFF ROAD
UNITY NORTHWEST CHURCH
1801 E. PALATINE ROAD

PUBLIC SCHOOLS

A. H. TOWNSHIP HIGH SCHOOL
302 W. EUCLID AVENUE
BERKLEY SCHOOL
501 S. BELMONT AVENUE
FOREST VIEW HIGH SCHOOL
2121 S. GILBERT ROAD
JOHN HERSEY HIGH SCHOOL
1900 E. THOMAS STREET
PROSPECT HIGH SCHOOL
401 E. KENSINGTON ROAD
MAC ARTHUR JR. HIGH SCHOOL
1700 N. SCHOENBECK RD.
MINER JR. HIGH SCHOOL
3101 E. MINER STREET
SOUTH JR. HIGH SCHOOL
514 S. HIGHLAND AVENUE
THOMAS JR. HIGH SCHOOL
1051 E. THOMAS STREET
KANE JR. HIGH SCHOOL
1550 N. ARLINGTON HTS. RD.
DRYDEN SCHOOL
722 S. DRYDEN AVENUE
PATTON SCHOOL
1616 N. PATTON AVENUE
RIDGE SCHOOL
410 N. FERNANDEZ AVENUE
ROSS SCHOOL
700 N. SCHOENBECK RD., P.H.
JAMES WHITCOMB RILEY SCHOOL
2905 N. WINDSOR DRIVE

SULLIVAN SCHOOL
700 N. SCHOENBECK RD., P.H.
DUNTON SCHOOL
1220 S. DUNTON AVENUE
GREENBRIER SCHOOL
2330 N. VERDE DRIVE
IVY HILL SCHOOL
2211 N. BURKE DRIVE
DWYER SCHOOL
500 S. DWYER AVENUE
JULIETTE LOW SCHOOL
1530 S. HIGHLAND AVENUE
KENSINGTON SCHOOL
201 S. EVANSTON AVENUE
NORTH SCHOOL
410 N. ARLINGTON HTS. RD.
OLIVE SCHOOL
505 E. OLIVE STREET
EDGAR ALLAN POE SCHOOL
2600 N. HIGHLAND AVENUE
PARK SCHOOL
306 W. PARK STREET
WESTGATE SCHOOL
1231 W. GROVE STREET
WILSON SCHOOL
151 E. PALATINE ROAD
WINDSOR SCHOOL
1515 E. MINER STREET

PAROCHIAL SCHOOLS

ST. JAMES CATHOLIC SCHOOL
821 N. ARLINGTON HTS. RD.
ST. JAMES JR. HIGH SCHOOL
800 S. ARLINGTON HTS. RD.
ST. PETER LUTHERAN SCHOOL
111 W. OLIVE STREET
ST. VIATOR'S HIGH SCHOOL
1213 E. DARTON STREET

OUR LADY OF THE WAYSIDE SCHOOL
432 S. MITCHELL AVENUE
OUR LADY OF THE WAYSIDE JR. HIGH
435 S. RIDGE AVENUE
VIATORIAN NOVITIATE
1212 E. EUCLID AVENUE

HOSPITAL
NORTHWEST COMMUNITY HOSPITAL
800 W. CENTRAL ROAD

U. S. ARMY HEADQUARTERS
56TH ARTILLERY BRIGADE
WILKE & CENTRAL ROAD

ARLINGTON PARK

ARLINGTON PARK TOWERS
1400 W. EUCLID AVENUE
ARLINGTON PARK RACE TRACK
2200 W. EUCLID AVENUE

ARLINGTON PARK THEATRE
1400 W. EUCLID AVENUE

PARKS

*45 MEMORIAL PARK
FREMONT & MELBOURNE AVENUES

FIELD HOUSES & SWIMMING POOLS

RECREATION PARK
500 E. MINER STREET
FRONTIER PARK
1055 N. KENSICOTT DRIVE
OLYMPIC PARK & POOL
660 N. RIDGE AVENUE

PIONEER PARK
500 N. FERNANDEZ AVENUE
HERITAGE PARK
506 W. VICTORIA LANE
CAMELOT PARK
1005 E. SUFFIELD DRIVE

PLAYGROUND APPARATUS

ANITA PARK
PHELPS WATERMAN
BERDELEEN PARK
*BELMORE-STRATFORD-EASTMAN MINER
GREENBRIER PARK
VERDE-RIVANNO
DUNTON PARK
700 S. DRYDEN PLACE
EVERGREEN PARK
GROVE-GERMONS-FORREST
GREENS PARK
OLIVE-DOUGLAS
*HESTGATE PARK
HUNTER-ST. JAMES
RAVEN PARK
BERKLEY-HIGHLAND
PRAIRIE PARK
BELMONT-DOUGLAS-FOSTER
J. D. ELENTLE PARK
MULBERRY-STRATFORD

HASBROOK PARK
333 W. MAUDE STREET
HICKORY MEADOWS PARK
HICKORY-MARTIN
KLEHM PARK
HAWTHORNE-WILSHIRE
SOUTH PARK
SOUTH GROVE-HIGHLAND VALE
VIRGINIA PARK
THOMAS-CHICAGO
VOLZ PARK
ST. JAMES-KENSICOTT
CAREFREE PARK
BELMONT-DOUGLAS
FOREST VIEW PARK
GILBERT-FALCON
PATRIOT PARK
1815 N. DALE AVENUE

CHICAGO & NORTHWESTERN RAILROAD DEPOT
NORTHWEST HIGHWAY BETWEEN EVERGREEN & DUNTON

STREET GUIDE

STREET NAME	DIRECTION	SITUATED	LOCATION
ADAMS AVE. (SEE DOUGLAS)	N-S	600 E.	1600 N
ALEXANDRIA ST.	E-W	2200 N	1100 W
ALGONQUIN RD. (ILL. R*62)	NW-SE	2300 N	Continuous
ALLEGHANY DR.	E-W	2500 N	1100 W
ALLEN LANE	N-S	1600 W	550 S
ANNE ST.	N-S	2700 E	1450 N
APPLETREE LANE	E-W	2500 N	900 E
ARLINGTON HEIGHTS RD. (FORMERLY STATE RD.)	N-S	200 E	Continuous
ARTHUR AVENUE	N-S	1400 E	600 S
ARTHUR STREET	E-W	2800 N	"0" E
AVON LANE	E-W	1700 N	1900 E
BANBURY DRIVE	N-S	800 E	500 S
BEL AIRE DRIVE	E-W	"0" N-S	2800 E
BELMONT AVENUE	N-S	400 E	Intermittent
BERKLEY DRIVE	E-W	2600 N	800 W
BEST DRIVE	N-S	3500 E	3000 N
BEVERLY LANE	N-S	800 E	Intermittent
BIRCHWOOD LANE	N-S	2200 E	2100 N
BRADFORD DRIVE	N-S	750 E	2500 N
BRAESIDE DRIVE	E-W	2750 N	800 W
BRANDYBERRY COURT	E-W	1200 N	2400 E
BREAK PLACE	E-W	2050 N	900 E
BRIARWOOD LANE	N-S	1200 E	2600 N
BRIGHTON PLACE	N-S	2100 E	Intermittent
BRISTOL LANE	N-S	600 E	500 S
BRITTANY DRIVE	E-W	2450 N	400 W
BROOK DRIVE	E-W	2600 N	600 E
BROOKWOOD DRIVE	E-W	2500 N	1000 E
BROWN STREET	E-W	1050 N	1000 W
BUFFALO GROVE ROAD	N-S	1400 E	1900 N
BURGUNDY ROAD	E-W	1500 N	1200 W
BURKE DRIVE	N-S	900 E	2100 N
BURNING TREE LANE	E-W	2900 N	600 W
BURR OAK DRIVE	E-W	2200 N	Intermittent
BURTON PLACE	N-S	500 E	Intermittent
BUSSE ROAD	N-S	1800 E	Intermittent
BUTTERNUT LANE	E-W	200 N	1700 W
CAMBRIDGE STREET	E-W	2200 N	1700 W
CAMP MC DONALD ROAD	E-W	3100 N	2600 E
CAMPBELL STREET	E-W	N-S Base	Intermittent
CAMPUS DRIVE	E-W	3250 N	500 W
CANTERBURY DRIVE	E-W	2650 N	"0"
CARLYLE PLACE	N-S	1300 E	Intermittent
CARRIAGE WAY DRIVE	N-S	3000 E	3500 N
CATINO STREET	E-W	650 S	800 W
CEDAR STREET	E-W	1400 N	"0" E-W
CEDAR GLEN DRIVE	N-S	1000 E	2400 S
CENTER LANE	N-S	2100 E	1250 S
CENTRAL ROAD	E-W	1300 N	Continuous
CHAMPLAIN STREET	N-S	1000 W	2400 N
CHARLES STREET	N-S	1700 N	600 E
CHATHAM PLACE	N-S	1500 E	500 S
CHERRY HILL DRIVE	N-S	2000 N	1500 E
CHERRY LANE	E-W	2150 N	800 E
CHESTERFIELD DRIVE	N-S	2100 E	1750 S
CHESTNUT AVENUE	N-S	300 N	Intermittent
CHICAGO AVENUE	N-S	1600 W	Intermittent
CIRCLE HILL DRIVE	N-S	2100 E	2150 N
CLARENCE AVENUE	N-S	1200 E	1800 N
CLARENDON AVE. & STREET	N-S	1200 N	Intermittent
CLEARBROOK DRIVE	E-W	2600 N	2600 E
CLEVELAND AVENUE	N-S	1200 E	600 S
COLLEGE DRIVE	E-W	2000 N	"0"
CONCORD DRIVE	N-S	1400 N	1500 W
COTTONWOOD LANE	E-W	350 N	1300 W
COUNCIL TRAIL	E-W	1300 N	600 E
CRABTREE DRIVE	NW-SE	1450 N	1900 E
CRESTWOOD DRIVE	E-W	2200 N	700 E
CYPRESS STREET	E-W	1200 N	Intermittent
DALE AVENUE	N-S	2600 E	Intermittent
DANEEN COURT	N-S	800 E	1400 N
DAVIS STREET	NW-SE	100 S	Intermittent
DEMPSTER STREET	E-W	3800 N	Intermittent
DERBYSHIRE LANE & AVE.	N-S	1200 E	Intermittent
DONALD AVENUE	N-S	2500 E	Intermittent
DOROTHY AVENUE	N-S	1750 N	2500 E
DORSET STREET	E-W	1550 N	2700 E
DOUGLAS AVENUE	N-S	600 E	Intermittent
DOVER LANE	N-S	1825 N	1700 E
DRURY LANE	N-S	1300 E	Intermittent
DRYDEN AVENUE & PLACE	N-S	1000 E	Intermittent
DUNDEE ROAD	E-W	3500 N	Continuous
DUNTON AVENUE	N-S	"0" E-W	Intermittent
DWYER AVENUE	N-S	1200 E	Intermittent
EASTMAN STREET	E-W	300 N	Intermittent
EASTWOOD STREET	E-W	2000 N	2000 W
EDWARD STREET	N-S	"0" E	2900 N
ELIZABETH DRIVE	E-W	2700 N	2100 W
ELK GROVE ROAD	N-S	3700 N	2000 S
ELM LANE	N-S	1100 N	850 E
ELM STREET	E-W	900 N	Intermittent
ELMWOOD CIRCLE	E-W	1950 N	2000 E
EMBERS LANE	N-S	800 E	2400 S
EMERSON ST.	E-W	2600 N	300 E
ETHNAN AVENUE	N-S	2800 E	1600 N
EUCLID AVENUE	E-W	600 N	Continuous
EVANSTON AVENUE	N-S	2500 E	Intermittent
EVERGREEN AVENUE	N-S	100 E	Intermittent
EVERGREEN TERRACE	N-S	1500 E	2000 N

LAND ZONED BUT NOT DEVELOPED FOR MULTI-FAMILY HOUSING DURING MHDC HEARINGS. (1971)

A - 3 Lakes Project	712	Units
B - Frenchmans Cove	450	"
C - Randhaven	344	"
D - Northgate M. F.	1,000	"
E - Stonebridge Hill	195	"
F - Arlington Park Property	3,500	"
G - Colleto's Apartments	15	"
H - Sommerset + Miner	99	"
J - Central City High Density	1,000 +	"
K - McKinley Ave. M. F. Area	64	"
L - Surrey Ridge Park	432	"
M - Surrey Ridge West	255	"
N - Briarwood Algonquin	180	"
O - Gatehouse Apt.	837	"
Total	9,073	"

-- 0 --

Existing M. F. Units at the end of 1970 - ~~4,855~~ 5,239

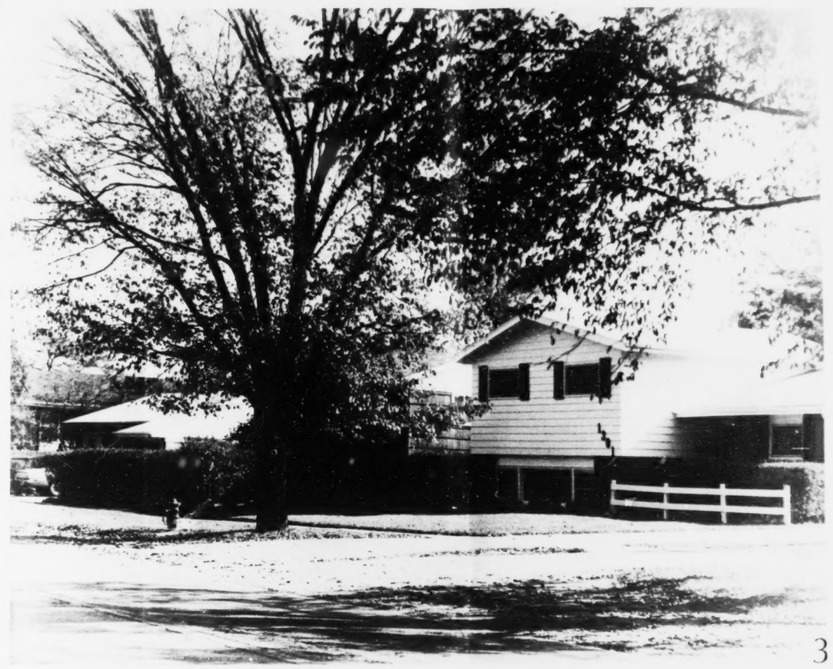
Existing M. F. Units and possible M. F. Units in Land Zoned R-5 -- 9,073 + ~~4,855~~ 5,239 = ~~13,928~~ 14,212

LAND ZONED BUT NOT DEVELOPED FOR

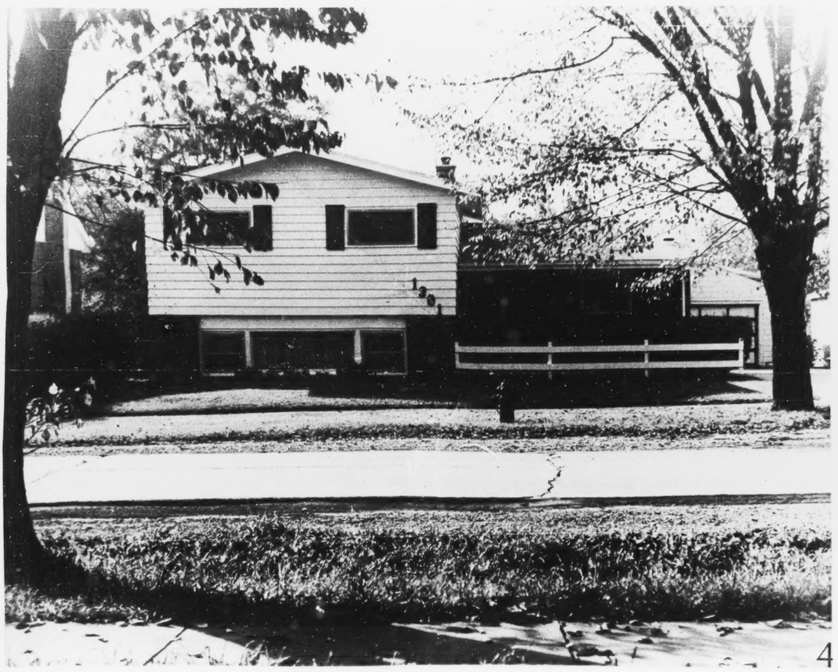
MULTI-FAMILY HOUSING DURING M.H.D.C. HEARINGS

1

2



3



4

14

17

F3

SOUTH SIDE OF EUCLID AVENUE

DEFENDANT'S EXHIBIT NO. 14

5

6

7

8

9

10

WEST SIDE OF DRURY LANE

F4

122

DEFENDANT'S EXHIBIT NO. 14

11

12

13

WEST SIDE OF DRURY LANE

15

16

WEST SIDE OF DRYDEN AVENUE

DEFENDANT'S EXHIBIT NO. 14

FILED
NOV 21 1975

No. 75-616

In the Supreme Court of the United States

OCTOBER TERM, 1975.

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

F. WILLIS CARUSO
407 S. Dearborn Street
Chicago, Illinois 60605
(312) 341-9345

ROBERT G. SCHWEMM
University of Kentucky
College of Law
Lexington, Kentucky 40506
(606) 258-8998

GERALD J. MULLER
WILLIAM J. McNALLY
53 W. Jackson Blvd.
Chicago, Illinois 60605
(312) 939-5797

CAROL M. PETERSEN
233 S. Wacker Drive
Chicago, Illinois 60605
(312) 876-1000

Attorneys for Respondents and Intervening Respondents

Of Counsel:
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

SCHIFF, HARDIN & WAITE
Chicago, Illinois

November 20, 1975

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

PAGE

Questions Presented for Review 2

Constitutional Provision and Statutes Involved 2

Statement 3

Argument 8

I. There Is No Conflict of Decision 9

II. The Decision Does Not Present an Important Question of Federal Law 13

III. The Decision is Correct 15

Conclusion 19

CITATIONS

Acevedo v. Nassau County, 500 F.2d 1078 (2d Cir. 1974) 13

Adickes v. S.H. Kress and Co., 398 U.S. 144 (1970) 10

Buchanan v. Warley, 245 U.S. 60 (1917) 15

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 14

Citizens Committee for Faraday Wood v. Lindsay, 507 F.2d 1065 (2d Cir. 1974), *cert. denied,* 421 U.S. 948 (1975) 13

PAGE

City of Richmond v. Deans, 281 U.S. 704 (1930) 15

Clark v. Universal Builders, Inc. 501 F.2d 324 (7th Cir.), *cert. denied,* 419 U.S. 1070 (1974) 8

Construction Industry Association of Sonoma County v. City of Petaluma, No. 74-2100 ..... F.2d ..... (9th Cir. 1975) 11

District of Columbia v. Carter, 409 U.S. 418 (1973) 16

English v. Town of Huntington, 448 F.2d 319 (2d Cir. 1971) 11

Harmon v. Tyler, 273 U.S. 668 (1926) 15

Hunter v. Erickson, 393 U.S. 385 (1969) 15

James v. Valtierra, 402 U.S. 137 (1971) 9, 10, 18

Kennedy Park Homes Assn. Inc. v. City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971) 12-13, 15

Lindsey v. Normet, 405 U.S. 56 (1972) 9

Mahaley v. Cuyahoga Metropolitan Housing Authority, 500 F.2d 1087 (6th Cir. 1974) 11, 12

Mayers v. Ridley, 465 F.2d 630 (D.C. Cir. 1972) 16

Milliken v. Bradley, 418 U.S. 717 (1974) 10

Palmer v. Thompson, 403 U.S. 217 (1971) 9-10

Reitman v. Mulkey, 387 U.S. 369 (1967) 15

San Antonio Independent School District v. Rodriguez, 411 U.S. 1 (1973) 9

Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) 16

PAGE

Trafficante v. Metropolitan Life Ins. Co., 409 U.S. 205 (1972) 18

United Farm Workers of Florida Housing Project v. City of Delray Beach, 493 F.2d 799 (5th Cir. 1974) .. 12, 13, 15

U.S. v. City of Black Jack, 508 F.2d 1179 (8th Cir.) *cert. denied,* 95 S.Ct. 2656 (1975) 12, 16

U.S. v. Hunter, 459 F.2d 205 (4th Cir. 1972) 17

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) 10

Warth v. Seldin, 45 L.Ed.2d 343 (1975) 10, 11, 14

Wright v. City of Emporia, 407 U.S. 451 (1972) 15

Ybarra v. City of the Town of Los Altos Hills, 503 F. 2d 250)9th Cir. 1974) 11, 12

Constitutional Provisions and Statutes

United States Constitution—Amendment XIV 2, 5, 12, 15

28 U.S.C. §1331 5

28 U.S.C. §1343 5

Civil Rights Act of 1868, 42 U.S.C. 1982 .....2, 5, 16

Civil Rights Act of 1871, 42 U.S.C. 1983 .....2, 5

Fair Housing Act of 1968, 42 U.S.C. § 3601 et seq. 2, 3, 5, 12, 16, 17

Miscellaneous

114 Congressional Record 17

In the
Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,

Intervening Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

QUESTIONS PRESENTED FOR REVIEW

1. Do municipal defendants violate the Fair Housing Act of 1968 (42 U.S.C. §§3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982) by perpetuating racial segregation through refusing, without a compelling public interest, to rezone property so as to permit an integrated housing development which would appreciably diminish segregation in the municipality, especially when historically the area is racially segregated through the operation of dual housing markets and the municipal defendants have accommodated the housing needs of the municipality's white residents but have not in the past sponsored or participated in any subsidized housing development?

2. In an area segregated racially through the operation of dual housing markets, do municipal defendants who have accommodated the housing needs of the municipality's white residents but have not in the past sponsored or participated in any subsidized housing developments violate the Fourteenth Amendment and the Civil Rights Act of 1871 (42 U.S.C. §1983) by perpetuating racial segregation through refusing, without a compelling public interest, to rezone property so as to permit an integrated housing development which would appreciably diminish segregation in the municipality?

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

In addition to the statutes and constitutional provision set forth in Appendix D to the Petition, this case involves:

> 42 U.S.C. §3617. *Interference, coercion, or intimidation; enforcement by civil action.* It shall be unlawful to coerce, intimidate, threaten, or interfere with any persons in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by §§3603, 3604, 3605, or 3606 of this title. This section may be enforced by appropriate civil action.

STATEMENT

On September 28, 1971, the Trustees of the Village of Arlington Heights refused to rezone a fifteen-acre parcel of land, bounded on two sides by single-family homes,* upon which respondent MHDC proposed to build Lincoln Green, a low- and moderate-income housing development for which MHDC had spent $38,000 planning and designing. (Tr. 276) Lincoln Green, unlike the rest of the Village, undoubtedly would have been an integrated community (Pet. App. A8)** which might well have increased the minority population of the Village by over 1000 percent (Pet. App. A8), and the question of racial integration

---

* Petitioners' statement that the subject property is surrounded by land "developed for R-3 single-family use" is mistaken. While it abuts single-family homes on one side and on a second faces single-family homes across a major arterial street (Tr. 233-34, 391-92, 788-89), on two sides it abuts undeveloped St. Viator property. (Pet. App. A2)

** Thus petitioners' assertion that the Court of Appeals ruled that there was merely a "possibility" that Lincoln Green "might" contain a higher percentage of blacks than an R-3 single family subdivision built on the site (Pet. 8 and 9 respectively) is totally fallacious. Respondents had proved at trial that 40% of those eligible for Lincoln Green would be black (Pet. App. A6), that MHDC markets its housing so as to attract minorities (Tr. 45, 229) and that it had successfully done so elsewhere. (Tr. 251)

was clearly before the Trustees when they denied MHDC's application for rezoning.*

Lincoln Green will not be a highrise development, but merely a cluster of two-story townhouses no higher than the surrounding single family homes. As noted by two dissenting members of the Arlington Heights Plan Commission, in terms of density, architecture and most other characteristics, such townhouses are more similar to R-3 dwellings than R-5 buildings. (Pet. App. A10) Under the plan more than sixty percent of the property was to be maintained as open space. (Pet. App. A2) The buildings would cover 16% of the site while the abutting single-family homes cover 24% of the lots upon which they are located. (Tr. 377-78 and Ps. Ex. 11, p. 7). There would be better screening and traffic control within the development than could be provided in a single-family subdivision (Tr. 380 and 381). There would be no adverse impact upon municipal facilities and services (Ps. Ex. 14 and 15). The development would make a net contribution in terms of revenue to both the Village and the school districts within

* For example, one letter from a local resident appearing in the Arlington Heights Herald a month before the first Plan Commission hearing began:

> "Concerning your editorial, 'Housing: An Ignored Issue': It isn't ignored, it's unwanted. We do resist low-income housing because it is a ploy to export blacks from Chicago to integrate the suburbs. That came out forcefully in the St. Viator housing proposal." (Ps. Ex. 48-1).

Another letter complained:

> "I'm a bit tired of hearing and reading about the Low Income Housing in Arlington Heights for the benefit of our colored and Spanish-American friends in Chicago. One wonders who is running our village, our Mr. Walsh or Mayor Daley." (Ps. Ex. 48-2).

which it lies. (Pet. App. As-A3; Tr. 243-47 and Ps. Ex. 26, p. 5).

After the trustees denied the application for rezoning, this suit was instituted. Jurisdiction over the Village was based upon 28 U.S.C. §1331 (the jurisdictional basis of the Fourteenth Amendment claim), 28 U.S.C. §1343 (for the §1982 claim) and 42 U.S.C. §3612 (for the §§ 3604 and 3617 claim). Jurisdiction over the individual defendants, all officials of the Village, was based upon §1331 (for the Fourteenth Amendment claim), §1343 (for the §§ 1982 and 1983 claims, and §3612 (for the §§ 3604 and 3617 claims).

After a trial on the merits, the district court, concluding that there was no racial discrimination involved or other violation of constitutional or statutory rights, denied the plaintiffs any relief.* The Seventh Circuit, per Swygert, J., reversed.**

At the trial, evidence of prior zoning in Arlington Heights showed that petitioners rezoned 60 parcels of land

* Petitioners' argument that the trial judge's "findings" of no discrimination were reversed by the Court of Appeals without a determination that they were clearly erroneous (*see, e.g.,* Pet. 6, 9 and 10) ignores the simple fact that the "findings" to which petitioners refer are the trial judge's ultimate conclusions of law which were the subject of the appeal. The Court of Appeals accepted the few findings of the trial court and fleshed out the record when the trial court was silent on a necessary question of fact.

** Fairchild, Ch. J., dissented on a question of fact but agreed that, as a matter of law, "if plaintiffs establish that the Village's enforcement of its zoning scheme makes construction of housing for low and moderate-income individuals not reasonably possible, the refusal perpetuates racial segregation and, absent compelling governmental justification, the plaintiffs would be entitled to the relief they seek." (Pet. App. 11A)

in Arlington Heights to R-5 for large multi-family projects (e.g., Ds. Ex. 10 and 11), 53 of which were adjacent on at least one side to single-family homes (Ps. Ex. 12 and 52). As a result, there were some 5,239 market-rent apartments in Arlington Heights in 1970. (Tr. 692) By 1973 there were 6,085 and zoning for 9,073 more. (Pet. 5) However, the minimum monthly rents were so high that low- and moderate-income persons could not afford these apartments. (Tr. 77-79; 479-80; 489-90). Indeed, the Village President, a Village study, and the principal spokesman opposing Lincoln Green all publicly acknowledged the need for low- and moderate-income housing in the community (Final Pre-trial Order, Stipulation of Uncontested Facts, #20 and Ps. Ex. 43, pp. 3-4). The trial court found that such housing was scarce (Pet. App. B4), and the Court of Appeals noted the great demand for it. (Pet. App. A2)

While the Village accommodated the housing needs of the affluent whites who could afford the new apartments, it rejected the only two applications ever before it for rezonings to accommodate low- and moderate-income housing. (See Ds. Ex. 10, #21 and Tr. 853). It has no subsidized housing (Pet. App. A2), and the supply of low-cost housing in Arlington Heights is actually declining. (Tr. 483-84; Ps. Ex. 18, p. 19). MHDC was unable to find an economically feasible and suitable alternate site for Lincoln Green. (Pet. App. A8)

After taking judicial notice of the high degree of racial residential segregation in Chicago and its environs (Pet. App. A7), the Court of Appeals went on to set forth the detailed facts of residential segregation in Arlington Heights and its immediate area. See Pet. 7. According to statistics of plaintiffs' expert, demographer and urbanologist Pierre de Vise, Arlington Heights is the most residentially segregated community in the Chicago metropolitan area among municipalities with more than fifty thousand residents.* The percentage of Blacks in the four county area of which Arlington Heights is a part actually decreased from 1960 to 1970 while the percentage of the population in the entire Chicago metropolitan area that was black increased from fourteen percent to eighteen percent. (Pet. App. A7-A8)

As the Court of Appeals observed, the impact of this statistic can be fully appreciated only in the context of the shift in employment opportunities during the same period. While the City of Chicago lost 230,000 jobs, the number of jobs in the four-township Arlington Heights area rose from 100,000 to 200,000. Blacks, however, have not been able to take full advantage of these job opportunities. In 1970 only 137 of the 13,000 people who worked in Arlington Heights were black. Part of the explanation for this is that many black workers have been unable to find housing they can afford in Arlington Heights. (Pet. App. A7-A8)

---

* Petitioners mistakenly characterize Prof. de Vise's testimony when they claim that he testified that 3,244 blacks could afford to live in Arlington Heights. (Pet. 10) That figure is the number of blacks who would hypothetically live in Arlington Heights in a color-blind market, assuming random dispersal based upon income and cost of housing.

ARGUMENT

The petitioners fail to identify the rule of the case which conflicts in any way with any of the cases they cite. Their rhetorical generalizations (Pet. App. 8) have no relationship to the decision below, which judged the impact, assessed in terms of historical context and ultimate effect (Pet. App. A7), of petitioners' refusal to rezone one parcel of land upon which a private developer sought to build integrated low and moderate-income housing. That historical context included two elements. First is "a high degree of racial residential segregation" (Pet. App. A7), quoting *Clark* v. *Universal Builders,* 501 F.2d 324, 334-5 (7th Cir.) *cert. denied,* 419 U.S. 1070 (1974), which, the Seventh Circuit noted in *Clark,* 501 F.2d at 334, resulted in dual housing markets in the Chicago metropolitan area. Second is the Village's exploitation of that problem in allowing itself to become almost 100% white (Pet. App. A9), by permitting the development of housing (including a great number of apartments) which was being marketed to and occupied by whites almost exclusively, by virtue of the dual housing markets, and by failing to sponsor or participate in any subsidized development (Pet. App. A8). In this context, the impact of petitioners' obstruction of one small private effort toward eliminating the pervasive problem of segregated housing, the court concluded, had a discriminatory effect and could not be justified by a compelling public interest. (Pet. App. A9-A10)

This ruling does not conflict with any decision of this Court or of the Courts of Appeals and does not raise an important question of federal law.

I.

There Is No Conflict of Decision.

1. There simply are no Supreme Court cases which deal with a municipality's duty not to interfere with private desegregation efforts. The cases petitioners cite are not in conflict with the decision of the Seventh Circuit.

The petitioners argue that there is no "right to housing," citing *Lindsey* v. *Normet,* 405 U.S. 56 (1972) and *San Antonio Independent School District* v. *Rodriguez,* 411 U.S. 1 (1973). (Pet. 13-14) Since neither respondents nor the court below has ever relied upon this theory of the case, these cases are irrelevant to the issue at bar. Similarly irrelevant is petitioners' argument that an ordinance which has a greater impact upon the poor than others is not, by virtue of that fact, unlawful. (Pet. 15) Respondents have never so argued, and the court below never so ruled.

Petitioners also argue that the decision conflicts with *James* v. *Valtierra,* 402 U.S. 137 (1971), and *Palmer* v. *Thompson,* 403 U.S. 217 (1971), which purportedly stand for the proposition that a classification which disproportionately impacts minorities is not thereby rendered unlawful. (Pet. 13 and 15) While respondents believe that these cases stand for no such proposition,* the court below

---

* *Valtierra* dealt first with voter rather than governmental action, giving great deference to California's long tradition of referenda, and with a claim of economic rather than race discrimination. The Court ruled that the record simply did not support a case of racial discrimination (402 U.S. at 141), and the dissent addressed itself solely to the issue of economic discrimination. In *Palmer,* the challenged action was the closing by Jackson, Mississippi of the four

(footnote continued)

specifically refused to rule for respondents on the basis of the law's disproportionate impact. (Pet. App. A6-A7) The decision is thus consistent with petitioners' reading of *Valtierra* and *Palmer*.

Lastly, petitioners argue that the decision is inconsistent with *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974) and *Milliken* v. *Bradley,* 418 U.S. 717 (1974). (Pet. 12-13 and 15 respectively) But *Belle Terre* has no relevance, not dealing at all with racial issues. *Milliken* is also irrelevant since the Court of Appeals has not ruled that racial imbalance alone is a constitutional violation. As noted above, the court ruled that the petitioners, absent a compelling public interest, have a duty not to interfere with private desegregation efforts, which they have actively prevented, when the context is one of racial discrimination and dual housing markets.

2. Petitioners also argue that respondents do not have standing and that the Court of Appeals decision conflicts *sub silentio* with *Warth* v. *Seldin,* 45 L.Ed.2d 343 (1975). (Pet. 24-26) Petitioners did not raise the standing issue on appeal. It was not a question presented to the Court of Appeals for review, and this Court will not ordinarily consider issues neither raised before nor considered in the Court of Appeals. See, e.g., *Adickes* v. *S. H. Kress and Co.,* 398 U.S. 144, 147, n.2 (1970) and cases cited.

(footnote continued)

white and one black public swimming pools, with one for whites and one for blacks being subsequently reopened by private persons. (403 U.S. at 218 and 252 respectively). There obviously was no disproportionate impact upon blacks, and the Court never stated there was.

In any event, respondents have standing. The individual respondents have looked for and been unable to find housing they can afford in Arlington Heights (see, e.g., Tr. 220-2) and would be eligible for Lincoln Green. (See, e.g., Tr 43-44; Ps. Ex. 24 [Ex. B]; and Tr. 207-208). They therefore have the particularized personal interest, in a particular project, sufficient to grant them standing. See *Warth* at 358-60 and n. 17-18 and cases cited therein.

3. Petitioners' assertion that the decision below conflicts with those of other circuits also lacks merit. The cases that do deal with the issue at bar are all supportive of the decision below.

Petitioners cite *English* v. *Town of Huntington,* 448 F. 2d 319 (2d Cir. 19) (Pet. 15 and 18) for the proposition that enforcement of an ordinance having a greater impact upon the poor does not render the ordinance invalid under the Equal Protection Clause. Since this case does not deal with economic discrimination, *English* is irrelevant.

Construction Industry Association of Sonoma County v. *City of Petaluma,* ..... F.2d ..... (1975) (Pet. 16-17), is similarly irrelevant. The ordinance in question was, from the point of view of racial minorities, "inclusionary," since, by giving some priority to developments including low- and moderate-income housing, it "offers new opportunities, previously unavailable, to minorities and low- and moderate-income persons." (..... F.2d at ....., n.16).

Ybarra v. *City of the Town of Los Altos Hills,* 503 F.2d 250 (9th Cir. 1974), (Pet. 16) and *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087 (6th Cir. 1974), (Pet. 17), which petitioners cite for the proposition that discrimination on the basis of poverty does not become discrimination on the basis of race because of a sta-

tistical correlation between race and poverty, are readily distinguishable, since the Seventh Circuit explicitly accepted this proposition and went on to rule for respondents on the desegregation ground.* Significantly, unlike the case at bar, the *Mahaley* court emphasized that "[t]here was not even a scintilla of evidence" that the defendant municipalities had ever been asked to approve any subsidized housing projects. (500 F.2d at 1094)

However, when they are asked to do so and where there is residential segregation, the circuits have unanimously ruled that municipalities may not obstruct private desegregation efforts. *U.S.* v. *City of Black Jack,* 508 F.2d 1179, 1184 (8th Cir.), *cert. denied,* 95 S.Ct. 2656 (1975) (Under Title VIII, "[t]he discretion of local zoning officials . . . must be curbed where 'the clear result of such discretion is the segregation of low-income Blacks from all white neighborhoods.' ") (citations omitted); *United Farmworkers of Florida Housing Project* v. *City of Delray Beach,* 493 F. 2d 799, 811 (5th Cir. 1974) (under the Fourteenth Amendment, ". . . in the realm of federally assisted housing, local authorities have an obligation to further the national housing policy of balanced and dispersed public housing [including low- and moderate-income housing] and to refrain from frustrating efforts to carry out that policy.") (citations omitted); *Kennedy Park Homes Assn. Inc.* v.

---

* It should be noted that respondents would prevail under the law of the case in *Ybarra,* since the court ruled that a claim of discrimination on the basis of poverty would be sustained if plaintiffs had been able to show that the ordinance prevented them from living in the municipality and that there was inadequate low-cost housing near their jobs. (503 F.2d at 254) Respondents made both showings in the case at bar.

City of Lackawanna, 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971).*

The Second Circuit in *Acevedo* v. *Nassau County,* 500 F. 2d 1078 (1974), a case petitioners argued is inconsistent with the decision below (Pet. 17), did not challenge cases, including *Delray Beach* and *Lackawanna,* which enjoined ". . . the governmental obstruction of private projects beneficial to minority groups or to integration" (500 F.2d at 1081). It simply held that it would not impose "an affirmative duty to construct housing." (*Id.*)

II.

The Decision Does Not Present an Important Question of Federal Law.

This case merely involves an effort to prevent one municipality from unlawfully interfering with the development of one housing project on one small site in a large urbanized area. Contrary to petitioners' assertions, it does

---

*As the Second Circuit stated in *Citizens Committee for Faraday Wood* v. *Lindsay,* 507 F.2d 1065, 1069 (2d Cir. 1974), *cert. denied,* 421 U.S. 948 (1975),

> . . . the City of Lackawanna was clearly segregated . . . Against this background we held that the city could not, absent a compelling interest, thwart the efforts of a private organization to build housing for *low-income* families in the white area of the city by, among other things, refusing to accede to a reasonable rezoning request. Other courts have reached similar results. (Citations omitted).

The *Lindsay* court also stated that, whereas "in the cited cases a city acted to thwart a private developer's attempt to construct housing for low-income persons" and in *Lackawanna* the plaintiffs "merely ask[ed] us to order the city to remove barriers to private development," the *Lindsay* plaintiffs were asking it to order the city to take affirmative steps to insure that the project in dispute would be built. (*Id.*)

not present issues of the affirmative duty of municipalities to construct housing; or to plan for, approve, and promote housing (Pet. 17); or "to take affirmative steps to zone for racial integration" (Pet. 8). Any injunction issued upon remand will be prohibitory; no mandatory action by the petitioners is required. Questions of law which involve the affirmative responsibilities of municipal officials to plan for or construct low- and moderate-income housing can be resolved when a proper case raises the issue before this Court. *Warth, supra,* certainly insures that such an issue will be adjudicated in the most intense adversarial context possible and that petitioners fear of impending doom is groundless.

While the decision below may have a prophylactic effect elsewhere, exclusionary zoning litigation involving but one project is always limited in its application by a plethora of planning, housing, and environmental facts dealing with the parcel and project in issue. Given this, pronouncements of general principles are almost impossible and certainly unwise, at least at this point in time when doctrinal development is still in its infancy. Thus, the Seventh Circuit wisely refrained from pronouncing a broad rule of law and limited the decision to "the facts of this case." (Pet. App. A9-A10)

Petitioners would insist nevertheless that the precedent created invalidates "zoning ordinances . . . around the country." (Pet. 8) But

> ". . . [petitioners'] prophecy of high universal application of a constitutional precept so peculiarly dependent for its invocation upon appropriate facts fails to take into account 'Differences in circumstances [which] beget differences in law,' Whitney v. State Tax Commission, 389 U.S. 530." *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 726 (1961)

III.

The Decision is Correct

1. Under the Equal Protection Clause, a municipality cannot obstruct private desegration efforts, *Delray Beach, supra,* especially if within the context of segregation and private discrimination in the housing market, *Lackawanna, supra.*

While there are no cases of this Court directly on point, a number of cases are highly supportive of the analysis undertaken by the Courts of Appeal. It is axiomatic that municipalities cannot directly foster racial segregation. *Buchanan* v. *Warley,* 245 U.S. 60 (1917); *Harmon* v. *Tyler,* 273 U.S. 668 (1926); *City of Richmond* v. *Deans,* 281 U.S. 704 (1930). Since the measure of a state's action is its effect, *Wright* v. *City of Emporia,* 407 U.S. 451, 462 (1972), any action, which, absent a compelling public interest, has the effect of fostering such segregation must fail. It is, after all, "the reality [of] the law's impact" which matters. *Hunter* v. *Erickson,* 393 U.S. 385, 391 (1969). That reality achieves particular significance when the historical context is one of private housing discrimination and when the ultimate effect of the state's action is to permit that discrimination to continue. *Reitman* v. *Mulkey,* 387 U.S. 369, 373 (1967).

Once a conclusion of racial discrimination is drawn, the classification must be justified by a compelling public interest. As the Court of Appeals determined (Pet. App. A10-A11), there is no such compelling public interest here.*

---

* Petitioners' repeated assertion that the zoning ordinance is "admittedly" valid by all traditional zoning criteria and that it is "in

(footnote continued)

2. Petitioners' action also violated the Fair Housing Act of 1968 (Title VIII of the Civil Rights Act of 1968, 42 U.S.C. §3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. §1982). Respondents also urged these grounds below. (Brief for Plaintiffs-Appellants and Intervening Plaintiffs-Appellants, pp. 31-41) Petitioners have violated 42 U.S.C. §3604(a), by denying housing on the basis of race, and 42 U.S.C. §3617, by interfering with the right of equal housing opportunity. *U.S.* v. *City of Black Jack,* 508 F. 2d at 1181. They also have violated 42 U.S.C. §3604 (a), by otherwise making housing unavailable to minorities.

It is elemental that statutes are to be construed so as to effect the intent of the lawmakers. *District of Columbia* v. *Carter,* 409 U.S. 418, 420 (1973). Additionally, "[i]t is well-established that civil rights statutes should be read expansively in order to fulfill their purposes. *See* Griffin v. Breckenridge, 403 U.S. 88, 97 (1971); Daniel v. Paul [395 U.S. 298 (1969)]," *Mayers* v. *Ridley,* 465 F.2d 630, 635 (D.C. Cir. 1972) (*per curiam*) (J. Skelly Wright, J., concurring) (Title VIII case). Section 1982 must be similarly construed. "A narrow construction of the language of §1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by §1 of the Civil Rights Act of 1866 [§1982]." *Sullivan* v. *Little Hunting Park,* 396 U.S. 229, 237 (1969).

(footnote continued)

fact conceded that the ordinance would be valid if the 'compelling interest' test was not applied" (Pet. 23) is an astonishing misstatement. Respondents argued at length in the Court of Appeals that they "are entitled to judgment even if the reasonableness standard of traditional zoning cases were appropriate." (Reply Brief for Plaintiffs-Appellants and Intervening Plaintiffs-Appellants, p. 27; *see* discussion at 27-31).

Both the legislative history and judicial construction of Title VIII make it clear that it was designed to make possible the eradication of the social evil of residential segregation and not simply to prohibit private discrimination.

The legislative history of Title VIII consists mainly of the debates on the floor of each house.* In introducing the bill initially, Sen. Mondale indicted segregated housing patterns and the problems they have caused—segregated schools, the unavailability of suburban employment opportunities and the alienation of white and black Americans due to "lack of experience in actually living next" to each other. 114 Cong. Rec. 2274-76.** He went on to quote a 1967 report by the U.S. Commission on Civil Rights to indicate the dimensions of the problems that the amendment was intended to solve. That report noted that, in part, the inability of blacks to secure housing in suburbs and other white areas "stems from the refusal of suburbs and other communities to accept low-income housing" and that "an important factor contributing to the exclusion of the Negro from such areas" is the "policies and practices of agencies of government at all levels." 114 Cong. Rec. 2277.

The Act has consistently been interpreted along these lines. As this Court has said in construing Title VIII,

---

* *See U.S.* v. *Hunter,* 459 F. 2d 205, 210, n.4 (4th Cir. 1972)

** *See also, e.g.,* further discussion by Sen. Mondale at 114 Cong. Rec. 3421 and similar statements by other sponsors at 114 Cong. Rec. at 2279-80, 9559, 9591, and 9590. As Sen. Brooke, a co-sponsor of the measure, declared:

> . . . [W]e can and should make it possible for those who can to move to where better schools and services, decent homes and jobs are most plentiful. That is the simple purpose of this bill.

114 Cong. Rec. 2280.

quoting Sen. Mondale, "the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns,' " *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972).

Petitioners' actions are in conflict with MHDC's one small effort to bridge the ghetto wall and create an integrated and balanced living pattern.

Equity in addition to law supports the decision below. It is eminently fair. It gives to some blacks trapped in the inner-city the opportunity to use a Congressional program to live in a decent integrated environment where employment and educational opportunities are plentiful.

And what is lost in the process? The proposed development, well-designed housing, of no greater height, and with more open space than the abutting single-family homes, will harmonize with the neighborhood, will have no adverse impact upon municipal facilities and services and, significantly, unlike tax-exempt public housing,* would make a net contribution to the revenues to both the Village and the school districts within which it lies. Lincoln Green is clearly in the *public* interest. Respondents only claim of loss is a *private* interest—a speculative diminution in property values of some Village residents. What is gained for those Americans long victimized by racial discrimination in all its forms trivializes the Village's desperate efforts to protect its insiders who refuse to share their public world.

---

* *Compare Valtierra*, 402 U.S. at 143.

CONCLUSION

For the foregoing reasons, respondents respectfully suggest that the petition be denied.

Respectfully submitted,

F. Willis Caruso
William J. McNally
Gerald J. Muller
Carol M. Petersen
Robert G. Schwemm

Attorneys for Respondents and Intervening Respondents

Nov. 20, 1975.

Supreme Court, U. S.
FILED
JAN 23 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' BRIEF.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

INDEX.

	PAGE
Opinions Below	1
Jurisdiction	2
Constitutional Provisions and Statutes Involved	2
Questions Presented for Review	2
Statement of the Case	3
Summary of Argument	8
Argument	11
I. The Failure to Grant the Rezoning Request of the Respondent Did Not Violate the Civil Rights Acts, the Fair Housing Law, or the Fourteenth Amendment	11
A. The Fact That the Zoning Ordinance May Have a Greater Impact Upon the Poor or a Minority Group Does Not Invalidate it	16
B. There Is No Fundamental Right to Housing and the Compelling Interest Test Should Not Be Applied	22
II. The Respondents Failed to Overcome the Presumption of Validity Attaching to the Zoning Ordinance of the Village of Arlington Heights	27
III. The Respondents Lack Standing to Bring This Action	35
Conclusion	39
Appendix:	
Constitutional Provisions and Statutes Involved	A1

AUTHORITIES CITED.

Cases.

Acevedo v. Nassau County, 500 F. 2d 1078 (2d Cir. 1974) 15, 19
Bennett v. Chicago, 24 Ill. 2d 270 (1962) 30, 32, 33
Berman v. Parker, 348 U. S. 26 (1954), 99 L. Ed. 27.. 28
Bluhm v. City of Chicago, 110 Ill. App. 2d 136 (1969) . 32
Bright v. City of Evanston, 57 Ill. App. 2d 414 (1965) . 32
Citizens Committee for Faraday Wood v. Lindsay, 362 F. Supp. 651 (S. D. N. Y. 1973), aff'd 507 F. 2d 1065 (2nd Cir. 1974) 15, 20
Clark v. Universal Builders, Inc., 501 F. 2d 324 (7th Cir. 1974) (distinguished) 25
Clark Oil & Refining Corp. v. Evanston, 23 Ill. 2d 48 (1961) 37
Confederacion de La Raza Unida v. City of Morgan Hill, 324 F. Supp. 895 (N. D. Calif. 1971) 21, 22
Construction Industry Association of Sonoma County v. City of Petaluma, No. 74-2100 (9th Cir. August 13, 1975) 19, 27
Cosmopolitan National Bank v. Mount Prospect, 22 Ill. 2d 463 (1961) 32
Dailey v. City of Lawton, 452 F. 2d 1037 (10th Cir. 1970) (distinguished) 14
Davis v. Cities Service Oil Co., 420 F. 2d 1278 (10th Cir. 1970) 16
English v. Town of Huntington, 448 F. 2d 319 (2d Cir. 1971) 18, 21
Euclid v. Ambler Realty Co., 272 U. S. 365 (1926), 71 L. Ed. 303 ..... 27, 28

Exchange National Bank v. County of Cook, 25 Ill. 2d 434 (1962) 30, 33
Garner v. City of Carmi, 28 Ill. 2d 560 (1963) 31
Gregory v. City of Wheaton, 23 Ill. 2d 402 (1961) 32
Harris Trust & Savings Bank v. City of Chicago, 107 Ill. App. 2d 113 (1969) 32
Jacobson v. City of Evanston, 10 Ill. 2d 61 (1957) ... 32
James v. Valtierra, 402 U. S. 137 (1971), 28 L. Ed. 2d 678 ..... 7, 15, 17, 18, 23
Jans v. City of Evanston, 52 Ill. App. 2d 61 (1964) ... 32
Kennedy Park Homes Association v. City of Lackawanna, 318 F. Supp. 669 (W. D. N. Y. 1970) (distinguished) 14, 21
Lapkus Builders, Inc. v. City of Chicago, 30 Ill. 2d 304 (1964) 33, 34
LaSalle National Bank v. City of Evanston, 57 Ill. 2d 415 (1974) 30, 33, 34
LaSalle National Bank v. Cook County, 12 Ill. 2d 40 (1957) 31
Lawrence v. Oakes, 361 F. Supp. 432 (D. Vt. 1973) .. 15, 24
Lindsey v. Normet, 405 U. S. 56 (1972), 31 L. Ed. 2d 36 ..... 15, 23
Mahaley v. Cuyahoga Metropolitan Housing Authority, 500 F. 2d 1087 (6th Cir. 1974) 15, 20
Manger v. City of Chicago, 121 Ill. App. 2d 358 (1970) 34
McLarty v. Borough of Ramsey, 270 F. 2d 232 (3d Cir. 1959) 27
Milliken v. Bradley, 418 U. S. 717 (1974), 41 L. Ed. 2d 1069 ..... 17, 18
Nortncross v. Board of Education of Memphis, 397 U. S. 232 (1970), 25 L. Ed. 2d 246 16

Palmer v. Thompson, 403 U. S. 217 (1971), 20 L. Ed. 2d 438 ..... 15, 17
River Forest Bank & Trust Company v. Maywood, 23 Ill. 2d 560 (1962) 33
San Antonio Independent School District v. Rodriguez, 411 U. S. 1 (1973), 36 L. Ed. 2d 16 ..... 15, 18, 23
Selover, Bates & Co. v. Walsh, 226 U. S. 112 (1912), 57 L. Ed. 146 38
Skillken & Co. v. City of Toledo, et al., Nos. 74-2116 and 74-2320 (6th Cir. December 10, 1975) 24, 26
Standard State Bank v. Village of Oak Lawn, 29 Ill. 2d 465 (1963) 34
Sutter v. Village of Mundelein, 27 Ill. 2d 589 (1963) .. 30
Treadway v. City of Rockford, 28 Ill. 2d 370 (1963) 33
Trendel v. County of Cook, 27 Ill. 2d 155 (1963) ... 30, 32
Tuite v. City of Loves Park, 82 Ill. App. 2d 214 (1967) . 32
United States v. 79.95 Acres of Land, 459 F. 2d 185 (10th Cir. 1972) 16
Village of Belle Terre v. Boraas, 416 U. S. 1 (1974), 39 L. Ed. 2d 797 ..... 15, 22, 23, 27, 28, 29, 33
Warth v. Seldin, ... U. S. ....., 45 L. Ed. 2d 343 (June 25, 1975) 18, 36, 38
Western National Bank v. Village of Downers Grove, 122 Ill. App. 2d 107 (1970) 34
Western Turf Assn. v. Hyman Greenberg, 204 U. S. 359 (1907), 51 L. Ed. 520 38
Wheeling Steel Corp v. Glander, 337 U. S. 562 (1949) . 38
Ybarra v. City of Town of Los Altos, 503 F. 2d 250 (9th Cir. 1974) 18

Constitutional Provisions and Statutes.

United States Constitution Amendment XIV A1
Civil Rights Act of 1866, 42 U. S. C. A. §§ 1981-1982.. A1
Civil Rights Act of 1871, 42 U. S. C. A. § 1983 ..... A1
Fair Housing Act of 1968, 42 U. S. C. A. §§ 3601, et seq. A2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' BRIEF.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is reported in 517 F. 2d 409 and appears as Appendix A to the Petition for Writ of Certiorari filed herein. The opinion of the United States District Court for the Northern District of Illinois is reported at 373 F. Supp. 208 and is reprinted as Appendix B to the Petition for Writ of Certiorari filed herein.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on June 10, 1975; the order en banc denying the Petition for Rehearing was entered on August 13, 1975; the Petition for Writ of Certiorari was docketed October 23, 1975; the Petition for Writ of Certiorari was granted on December 15, 1975. The Petition for Writ of Certiorari was filed in accordance with 28 U. S. C. § 2101. The jurisdiction of this Court is invoked pursuant to the provisions of 28 U. S. C. § 1254.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED.

This case involves the Fourteenth Amendment of the Constitution of the United States; 42 U. S. C. A. §§ 1981-1982, the Civil Rights Act of 1866; 42 U. S. C. A. § 1983, the Civil Rights Act of 1871; 42 U. S. C. A. §§ 3601, *et seq.*, the Fair Housing Act of 1968. The relevant provisions are set forth in an Appendix to this brief.

QUESTIONS PRESENTED FOR REVIEW.

1. Does the failure to grant a rezoning request for multiple-family housing for low- and moderate-income families in the midst of a single-family area violate the Fourteenth Amendment, even though the Village was admittedly maintaining the integrity of its zoning plan and protecting neighboring property values?

2. Does an alleged discriminatory housing pattern in the Chicago metropolitan area impose upon a suburban municipality an affirmative duty to ignore its admittedly proper zoning ordinance in order to permit the construction of multi-family low- and moderate-income housing?

3. Is housing a fundamental constitutional right which requires the application of the "compelling interest" test?

4. Did the respondents overcome the presumption of validity attaching to the zoning ordinance of the Village of Arlington Heights?

5. Did the respondents have sufficient standing to litigate the merits of the zoning ordinance?

STATEMENT OF THE CASE.

The respondent, Metropolitan Housing Development Corporation, is a not-for-profit corporation organized for the purpose of developing low and moderate income housing in the Chicago metropolitan area. It has a 99 year lease and sale agreement with the owners of the subject property, which is a vacant 15 acre tract on the southeast corner of an 80 acre parcel owned by the Clerics of St. Viator who maintain a boys high school and a novitiate on the larger tract in the Village of Arlington Heights. The petitioners are the Village and the Village Trustees. The contract and lease under which the respondent claims an interest in the property is subject to rezoning for multiple-family purposes and the securing of a Section 236 financing commitment. The owners of the property are not parties to the lawsuit.

The subject property is zoned for R-3 One-Family Dwelling District under the Zoning Ordinance of the petitioners, Village, and has been zoned for single-family use since the first Village Zoning Ordinance. Under the Village Comprehensive Plan adopted in 1959, the property was designated for single-family use. Under the R-3 classification, property can be developed for single-family detached dwellings at a density of 8,750 square feet of lot area per dwelling unit. Approximately 50 single-family units can be placed upon the subject property. The purchase price of the subject property is $300,000.

The respondents propose to develop the land for 190 townhouses which were to be financed pursuant to Section 236 of the National Housing and Urban Development Act of 1968. All of the land surrounding the subject property is zoned and developed for R-3 single-family use. A map showing the existing land use and zoning and photographs of the development of the subject property and the surrounding area, which were received in evidence, appear in the Appendix Exhibit Volume (Def. Ex. 1 R. 693, 809, Def. Ex. 2 R. 700, 809, Def. Ex. 14, R. 704, 809).

Respondent applied for a zoning change to the R-5 multiple-family classification. After public hearings the Plan Commission recommended against the proposed rezoning and the Board of Trustees of the Village voted 6 to 1 to deny the requested rezoning. Suit was then instituted by the MHDC, corporation, and certain individual plaintiffs seeking to represent moderate income minority persons who claimed to seek housing in Arlington Heights. A Mexican-American resident of Arlington Heights and a local community organization, the Northwest Opportunity Center, intervened.

At the time of the decision of the Village Board in September of 1971, the Village had 5,239 existing multiple-family units. In addition to that, it had already zoned vacant areas for multiple-family use which would provide an additional 9,073 multiple-family units. Since 1962 the Village had considered 34 additional requests for R-5 rezoning that were not granted (R. 709). The Village had adopted a policy of utilizing R-5 multiple-family zoning districts as buffers between single-family zones and commercial, industrial and other high-intensity areas (R. 770).

After the denial by the Village of the Lincoln Green application, the Village Manager cooperated with respondents' Director of Real Estate in searching out other sites. Fourteen alternate sites in the Village were investigated; nine of them were rejected because they were too far removed from public facilities or were

surrounded by single-family areas; six other sites were rejected because the respondent MHDC thought them too expensive.

The corporate respondent had previously developed a 212 unit low and moderate income multiple-family project, Rand Grove Village, in an unincorporated area three-fourths of a mile outside the corporate limits of the Village. This site was one mile away from the Honeywell factory which is the principal employer of minority persons in the Village. The Lincoln Green site sought here was six miles removed from the Honeywell site. The nearest shopping center and school to Rand Grove is located two miles away, notwithstanding the fact that some sites in Arlington Heights were rejected because they were a mile or a mile and a quarter away from shopping facilities.

The 1970 population of the Village of Arlington Heights was 64,800. Based on the 1970 census data, the respondents' evidence showed that 3,244 blacks could afford to live in the Village (R. 588, 593). The respondents' demographer testified that 378 black households could buy housing in Arlington Heights, and 473 black households could rent housing in Arlington Heights based on economic data revealed by the census. He further testified that 2,500 blacks, who based upon the census data would be eligible for Lincoln Green housing, were also eligible for other housing in the Village (R. 595).

The respondents had made no survey of housing preferences of blacks employed in Arlington Heights, nor had they made an investigation of the number of blacks or Spanish speaking persons in Arlington Heights. Their evidence showed that Arlington Heights had the least industry of the surrounding communities (R. 629), and their expert characterized Arlington Heights as a dormitory suburb (R. 631).

The director of the intervenor Northwest Opportunity Center, testified that there were 188 families in a category of low or poverty income living in the Village, and they lived in a variety of housing (R. 481). The Village had financially sup-

ported the intervenor in 1971-72 and 1972-73. Some of the families they served had incomes too low to qualify for Lincoln Green. The organization served 1,500 families in the seven township area.

In August of 1973, there were 14,444 owner-occupied single-family homes and 6,085 multiple-family units in Arlington Heights. At the time of the MHDC zoning hearing, there was land zoned but not developed for a total of 9,073 multiple-family dwelling units. The vacancy rate for apartments in Arlington Heights according to the 1970 census was 11.5% (R. 798). At the time of the hearing before the Plan Commission, at least seven parcels which were zoned for R-5 multiple-family purposes, were for sale (R. 822).

The petitioner's evidence established the single-family character of the area in question and the consistent Village policy of utilizing the R-5 classification as a buffer between single-family use and commercial or industrial uses The subject property would not constitute such a buffer.

The petitioner's expert testimony indicated that the proposed development would have an adverse effect on adjacent property owners (R. 788, 793), and would have a detrimental effect on the value of single-family homes in the area (R. 931).

The petitioners also introduced evidence showing that the subject property could be economically developed for single-family homes at a price range comparable or higher than the existing single-family homes in the area (R. 929).

The respondent's own witnesses conceded that the subject property was suitable for single-family development on the unsubsidized market (R. 74), and that the property was worth at least $375,000 under the single-family classification (R. 471).

The trial court found that the respondents failed to carry their burden of proving discrimination by petitioners against racial minorities, 373 F. Supp. 208, 210. The Court pointed out that the weight of the evidence proves that the petitioners were

motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan, 373 F. Supp. 208, 211. It further found that low income workers do not have a constitutional right to low rental housing either where they work or elsewhere. The Court concluded that the zoning decision was not an arbitrary or capricious act in violation of the Fourteenth Amendment.

The Court of Appeals reversed the trial court, but in doing so generally sustained the findings of the trial judge. The District Court had found that the claim of a denial of equal protection had not been proven and the Court of Appeals declined to hold that that finding was clearly erroneous, 517 F. 2d 409, 412. The Court of Appeals also held that the District Court's finding that the petitioners were concerned with the integrity of the Village's zoning plan was not erroneous, 517 F. 2d 409, 412.

In reviewing evidence of other requested zoning changes in the Village, the Court of Appeals found that the evidence did not necessitate a finding that the Village was administering its buffer zone policy in a discriminatory manner. The Court of Appeals further recognized that merely because racial minorities constituted a higher percentage of the low and moderate income category, this disparity did not necessarily mean that the zoning change refusal had the type of racially discriminatory effect that required the invocation of the compelling interest test, recognizing the impact of this Court's decision in *James* v. *Valtierra*, 402 U. S. 137, 28 L. ed. 2d 678 (1971).

The Court of Appeals also noted that, based on economic factors, blacks would occupy five per cent of the housing in Arlington Heights, 517 F. 2d 409, 414, and conceded that the Village had not created the segregated housing pattern which the Court said existed in the entire Chicago area, 517 F. 2d 409, 414.

Notwithstanding these findings which were clearly indicated by the record, the Court of Appeals held that, under the facts

of the case, the Village's rejection of the Lincoln Green project had racially discriminatory effects. It applied the compelling interest test and concluded that the planning rationale behind the buffer zone policy and the fact that neighboring property might be diminished in value could not meet the compelling interest test. It concluded that since no compelling justification for the decision existed, the refusal to rezone was a violation of the equal protection clause of the Fourteenth Amendment.

Chief Judge Fairchild dissented, noting at the time of the Village's decision, there were at least nine undeveloped tracts of land in excess of 15 acres zoned for R-5 multiple-family use, and that the record did not contain a sufficient showing that it was not reasonably possible to construct the proposed project on one of these sites, 517 F. 2d 409, 416.

SUMMARY OF ARGUMENT.

I.

The zoning action complained of herein was undertaken by a legitimate desire to protect the integrity of the Village's zoning plan. It was predicated solely and completely upon sound zoning principles. The area in question is in the midst of a well established and uniform single-family area. The Village had more than 5,000 existing multiple-family units at the time of the zoning application and had zoned other areas for an additional 9,000 multiple-family units.

There were a substantial number of low income families residing in Arlington Heights and the census figures indicated that substantial numbers of blacks could afford to move to Arlington Heights. The zoning pattern of the Village was not conceived and did not operate to exclude black residents or low income families. The Village has consistently applied its policy of utilizing R-5 Multiple-Family Districts for buffer zone purposes. The mere fact that some blacks or Spanish speaking

persons, like whites, could not afford to live in single-family homes on the subject property does not require the Village to abandon its long established and rational zoning plan.

The trial court and the Court of Appeals found that the Village zoning policy was not administered in a discriminatory manner and that the Village was concerned with the integrity of its zoning plan. These findings were supported by the evidence and should not be disturbed.

The fact that the Zoning Ordinance might have a greater impact upon poor people or a minority group does not invalidate it. The fact that the Ordinance might exclude poor persons from residing on the subject property does not violate the Constitution, the Fair Housing Law, or the Civil Rights Acts. There is no fundamental constitutional right to housing, and the Court of Appeals erred in applying the compelling interest test.

II.

A zoning ordinance is presumed valid and the parties attacking it must show by clear and convincing evidence that it is invalid. A court will not substitute its judgment for that of the legislative body and federal courts do not sit as super zoning boards.

The ordinance in question is reasonable and is not on its face or in fact aimed at any racial or economic minority. The retention of a single-family classification on the subject property is a legitimate and valid exercise of the legislative discretion vested in the Village Board. There is substantial evidence in the record to indicate that the proposed development would have a detrimental effect upon nearby properties. The zoning is consistent with the established land uses in the area and the subject property is suitable for the purposes zoned.

III.

The respondents lack standing to bring this action. It is not a proper class action. The individual respondents have voluntarily resided in other communities and have not shown themselves to be in a class which was discriminated against by the Village. The individual intervenor already resides in Arlington Heights. The corporate respondent is a mere contract purchaser whose interest is dependent upon rezoning and therefore is not entitled to challenge the validity of the ordinance, particularly in the absence of the property owner as a party plaintiff; as a corporation, it has not been subject to racial discrimination.

The judgment of the Court of Appeals for the Seventh Circuit should be reversed and the decision of the trial court affirmed.

ARGUMENT.

I.

THE FAILURE TO GRANT THE REZONING REQUEST OF THE RESPONDENT DID NOT VIOLATE THE CIVIL RIGHTS ACTS, THE FAIR HOUSING LAW, OR THE FOURTEENTH AMENDMENT.

This is an action challenging the Zoning Ordinance of the Village of Arlington Heights as it applies to a 15 acre vacant tract of land zoned for R-3 single-family use. The tract is located in the heart of a single-family area which is also zoned for R-3 single-family use and is totally developed for single-family homes, parks, schools and churches, except for additional vacant land held by the owners of the subject property in conjunction with a boys high school and a clerical novitiate.

The Village of Arlington Heights, as both the trial court and the Court of Appeals recognized, refused to rezone the property to R-5 multiple-family purposes because the petitioners were motivated by a legitimate desire to protect the integrity of the Village's zoning plan. The action of the Village, as the trial court found, was predicated solely and completely upon sound zoning principles pursuant to the police power granted to the Village. The Court of Appeals refused to ascribe any racial motivation to the Village's action.

The respondents attempted to transform a simple zoning case into a civil rights action. They have attempted to raise issues of racial discrimination and alleged deprivation of constitutional rights in a situation where neither discrimination nor unlawful deprivation of constitutional rights was involved.

The Village's decision to prevent the development of multiple-family construction at a density of 15 units to an acre in the midst of a stable, well-established and uniform single-family

area, which had a density of 4 units to the acre, was consistent with its long-established policy and had none of the ulterior motives attributed to the petitioner by the respondents in this action. Any decision to rezone the 15 acres in question would have been spot zoning at its worst and would have destroyed the integrity of the zoning pattern and the master plan upon which the neighboring property owners and the community in general had long relied.

The evidence in the record indicates that the Village had at the time of the zoning application more than 5,000 existing multiple-family units. It had already zoned vacant areas for an additional 9,000 multiple-family units. There was a vacancy rate in existing apartment units in excess of 11%.

The respondent's evidence adduced by Bruce Newton, Executive Director of the intervenor, Northwest Opportunity Center, indicated that there were in fact at least 188 families in the category of low or poverty income living in the Village and that they lived in a variety of housing (R. 481). The respondent's witness, deVise, testified that, based upon economics and presumably on the zoning which the Village had previously granted, at least 3,244 blacks could afford to live in Arlington Heights based on the 1970 census. This evidence, standing alone, is clear and convincing that the zoning pattern of Arlington Heights was not conceived and did not operate to exclude black residents or low income families.

The record indicates clearly that the subject property is in all respects suitable for single-family purposes. Even the respondent's own real estate witness testified that the property was worth $75,000 more for single-family purposes than the purchase price for multiple-family purposes which the respondent, MHDC, had negotiated (R. 471).

The record is also demonstrative of a brisk and continuing demand for single-family homes in Arlington Heights and at the time of the application by MHDC, there was a vacancy rate in single-family homes of less than 1% (R. 801).

One of the intervening respondents, and in fact the only one that the trial court held had standing, Eluteria D. Maldonado, was a Mexican-American who resided in a single-family home in Arlington Heights and lived within 18 blocks of the Arlington Heights factory in which she worked. She was in fact the former owner of her home which had been taken over by her brother. The two other individual respondents who testified were black employees at the Honeywell factory in Arlington Heights and commuted to their work; however, the trial court found they did not present a definable or manageable class and had reasons other than racial discrimination for not choosing to live in the Village. 373 F. Supp. 208, 210.

There is no evidence that the defendant, Village, or any of the individual petitioners ever discriminated against MHDC, Maldonado, Guthrie, Ransom, or anybody else in any manner or tried to "zone them out" of Arlington Heights. There is no evidence in the record to indicate any discriminatory action on the part of the Village or the individual petitioners in violation of the federal statutes or the Constitution, and the trial court so found. These findings of fact were noted and not disturbed by the Court of Appeals.

The evidence in the record is clear and uncontroverted that the subject property is suitable for single-family development and can be economically developed for such purposes. It has always been zoned for that purpose. The 1959 Comprehensive Plan indicated that the property would remain in its single-family classification and that Plan has been followed.

The evidence is also clear that the entire area is developed for single-family homes, parks, schools and churches—uses which are permitted under the R-3 zoning classification. It is clear that hundreds of substantial single-family homes have been built and sold in the area in reliance upon the R-3 single-family classification.

The evidence in the record is also clear, as acknowledged by the trial court and the Court of Appeals, that the Village has

a definite policy of utilizing the R-5 multiple-family district for buffer zone purposes. Although the consistency of its application has been challenged by the respondents, both the trial court and the Court of Appeals held that the Village had in fact consistently followed this policy.

There is no rule of law, statute or decision prior to the opinion of the Court of Appeals in this case which requires that a municipality change an otherwise valid zoning ordinance merely because the developer seeks to use the property for low and moderate income housing. This is not a case involving a situation where the Village has rezoned the property in order to keep out a low or moderate income housing project or an effort to exclude development. The factual situation in this case is totally different from the cases of *Bailey* v. *City of Lawton,* 452 F. 2d 1037, and *Kennedy Park Homes Association* v. *City of Lackawanna,* 318 F. Supp. 669, where affirmative action of a discriminatory nature was taken to change zoning ordinances of a municipality specifically to prevent the development of a low or moderate income housing project.

The fact that the zoning ordinance makes land more expensive than the respondents desire does not thereby render the zoning ordinance invalid. The fact that a zoning ordinance which is otherwise proper may have a greater impact on the poor than other segments of society does not render the zoning ordinance invalid. The Fair Housing Act does not prohibit discrimination based on poverty, but merely discrimination based on racial grounds.

The mere fact that some blacks or Spanish-speaking Americans, like many other whites, could not afford to live in single-family homes which could be built on the subject property does not mean that Arlington Heights was required to abandon the long-established zoning plan which it sought to protect in this instance. Moreover, as the trial court pointed out, the corporate respondent, MHDC, had a contract which was

conditioned upon a 236 commitment which is now impossible to achieve because of the freeze on 236 developments.

There is no evidence in this record by which it could even be inferred that a racial motivation was present when the Village of Arlington Heights refused to spot zone in order to accommodate the desires of MHDC on this particular site. The fact that the action of the Village has an impact which might be felt by some members of a minority group does not constitute discrimination under the Fourteenth Amendment.

The finding of the trial judge that there was insufficient evidence to show discrimination by the Village against racial minorities should be dispositive of the whole controversy. The Court of Appeals in its opinion specifically found that the Village's zoning policy was not administered in a discriminatory manner and supported the District Court's findings that the Village was concerned with the integrity of the zoning plan.

The trial court stated that the basic issue was whether low income workers have a constitutional right to low rental housing either where they work or elsewhere and concluded that there is no such rule of law. The trial court's conclusion in this respect is of course well supported by the decisions of this Court and other federal courts throughout the country. *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 39 L. ed. 2d 797; *San Antonio Independent School District* v. *Rodriguez,* 411 U. S. 1, 36 L. ed. 2d 16; *Lindsey* v. *Normet,* 405 U. S. 56, 31 L. ed. 2d 36; *James* v. *Valtierra,* 402 U. S. 137, 28 L. ed. 2d 678; *Palmer* v. *Thompson,* 403 U. S. 217, 29 L. ed. 2d 438; *Acevedo* v. *Nassau County,* 500 F. 2d 1078; *Mahaley* v. *Cuyahoga Metropolitan Housing Authority,* 500 F. 2d 1087; *Citizens Committee for Faraday Wood* v. *Lindsay,* 362 F. Supp. 651, *aff'd.* 507 F. 2d 1065; *Lawrence* v. *Oakes,* 361 F. Supp. 432.

The Court of Appeals however in reversing the trial court did not deal with that proposition nor does it cite any authority which would give special privileges with respect to housing and zoning to low income persons regardless of race. It is

implicit in its opinion however that low income persons apparently do have such special privileges if there is a possibility that there will be a higher percentage of racial minorities in their number. There is no basis in the Fourteenth Amendment or in any decision of this Court or any other court cited to support such a conclusion.

A. The Fact That the Zoning Ordinance May Have a Greater Impact Upon the Poor or a Minority Group Does Not Invalidate It.

The trial court found and the Court of Appeals recognized that the Village's Comprehensive Plan had been generally systematically followed. The trial court found that the evidence indicated a serious damaging of surrounding single-family homes and the trial court concluded that the weight of the evidence proves that the respondents were motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan. These findings were supported by the evidence and should not be disturbed. *Northcross* v. *Board of Education of Memphis,* 397 U. S. 232, 25 L. ed. 2d 246; *United States* v. *79.95 Acres of Land,* 459 F. 2d 185, 187; *Davis* v. *Cities Service Oil Co.,* 420 F. 2d 1278, 1279.

In reversing the findings of the trial court, the Court of Appeals offered no legal support for the proposition that a zoning ordinance, which is otherwise legitimate and well within the legislative discretion of the municipal body, is invalid because the result might be the exclusion of low income persons who in turn might be black. The logic of this decision would dictate that there can no longer be any single-family zoning districts in any municipality if a developer seeks to build housing which he can show might be occupied by a greater percentage of a minority group than presently existed in that municipality. The decisions of this court and courts of appeal around the country reject such a proposition.

There is no evidence in the record and neither the trial court nor the Court of Appeals could find any evidence by which it could be inferrred that a racial motivation was present when the Village refused to spot zone in order to accommodate the desires of MHDC on this particular site.

The Zoning Ordinance of the Village of Arlington Heights on its face does not discriminate against anyone because of their race of ancestry. The fact that a legal requirement may have a greater impact upon the poor or other minority does not render that requirement invalid under the equal protection clause. *James* v. *Valitierra,* 42 U. S. 137, 28 L. ed. 2d 678. At page 682, this Court said:

> "The Article requires referendum approval for any low-rent public housing project, not only for projects which will be occupied by a racial minority. And the record here would not support any claim that a law seemingly neutral on its face is in fact aimed at a racial minority."

In *Palmer* v. *Thompson,* 403 U. S. 217, 29 L. ed. 2d 438, this Court held that the closing of all public swimming pools by the City of Jackson was not unconstitutional, notwithstanding the fact that Negroes would be affected to a greater extent than whites.

In *Milliken* v. *Bradley,* 418 U. S. 717, 41 L. ed. 2d 1069, this Court in a school segregation case held that racial imbalance in itself is not to be equated with a constitutional violation calling for remedy. It indicated that the fact that Detroit schools were segregated did not require an inter-district plan outside the corporate limits, absent any showing that the suburban school district had in fact discriminated. Thus, the fact that Arlington Heights is located in the Chicago metropolitan area, which the Court of Appeals described as segregated, does not impose an affirmative duty upon the Village of Arlington Heights to change its otherwise valid Zoning Ordinance, absent a showing of discrimination by Arlington Heights in the administration of an ordinance clearly valid on its face.

Neither the trial court nor the appellate court was able to find such discrimination. *Milliken* v. *Bradley*, 418 U. S. 717, 41 L. ed. 2d 1069, 1091.

The fact that enforcement of municipal ordinances might have a greater impact on the poor of course does not render the ordinance invalid under the Equal Protection Clause. *James* v. *Valtierra*, 402 U. S. 137, 28 L. ed. 2d 678; *English* v. *Town of Huntington*, 448 F. 2d 319, 324; *Ybarra* v. *City of Town of Los Altos*, 503 F. 2d 250.

In *Ybarra*, the Court of Appeals for the Ninth Circuit refused to apply the "compelling interest" test in a case challenging a large lot zoning ordinance on the grounds that it excluded Mexican Americans. The trial court had found that the ordinance prevented poor people from living in Los Altos and that if Mexican Americans did not live there, it was because of poverty. The Court at page 253 said:

> "We agree that discrimination against the poor does not become discrimination against an ethnic minority merely because there is a statistical correlation between poverty and ethnic background."

The Court there based its decision on this Court's opinion in *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1, 36 L. ed. 2d 16. In *Rodriguez* this Court had held that there was no violation of the Fourteenth Amendment Equal Protection Clause by a state's school financing program which allegedly had the effect of discriminating against the poor.

In the case of *Warth* v. *Seldin*, ... U. S. ....., 45 L. ed. 2d 343, decided on June 25, 1975, this Court denied standing of certain petitioners to attack a zoning ordinance which they contended was exclusionary. The Court however recognized that it could be economics rather than discriminatory zoning which denied access to housing in the municipality in question. The Court noted at page 359:

> "Indeed, petitioners' descriptions of their individual financial situations and housing needs suggest precisely the contrary—that their inability to reside in Penfield is the consequences of the economics of the area housing market, rather than of respondents' assertedly illegal acts."

In the instant case if some poor people are denied housing in Arlington Heights it is the consequences of the economics of the area housing market rather than any allegedly illegal zoning carried out by the Village.

In the recent case of *Construction Industry Association of Sonoma County* v. *City of Petaluma*, No. 74-2100, decided August 13, 1975 by the Court of Appeals for the Ninth Circuit, that Court reversed the trial court and rejected the concept that an allegedly exclusionary zoning ordinance was a violation of the Fourteenth Amendment. At page 11 of the slip opinion, the Court said:

> "In attacking the validity of the Plan, appellees rely heavily on the district court's finding that the express purpose and the actual effect of the Plan is to exclude substantial numbers of people who would otherwise elect to move to the City. 375 F. Supp. at 581. The existence of an exclusionary purpose and effect reflects, however, only *one* side of the zoning regulation. Practically all zoning restrictions have as a purpose and effect the *exclusion* of some activity or type of structure or a certain density of inhabitants. And in reviewing the reasonableness of a zoning ordinance, our inquiry does not terminate with a finding that it is for an exclusionary purpose.[11] We must determine further whether the *exclusion* bears any rational relationship to a *legitimate state interest*. If it does not, then the zoning regulation is invalid. If, on the other hand, a legitimate state interest is furthered by the zoning regulation, we must defer to the legislative act. Being neither a super legislature nor a zoning board of appeal, a federal court is without authority to weigh and reappraise the factors considered or ignored by the legislative body in passing the challenged zoning regulation."

In the case of *Acevedo* v. *Nassau County*, 500 F. 2d 1078, the Second Circuit was considering the liability of Nassau

County, New York, for abandoning plans for constructing low-income family housing. At page 1080, the Court noted:

> "Appellees have no constitutional or statutory duty to provide low income housing. There is no 'constitutional guarantee of access to dwellings of a particular quality.' Lindsay v. Normet, 405 U.S. 56, 74 (1972)."

The Court went on to say at page 1082:

> "The Fair Housing Act does not impose any duty upon a government body to construct or to 'plan for, approve and promote' any housing."

In the case of *Mahaley* v. *Cuyahoga Metropolitan Housing Authority*, 500 F. 2d 1087 (1974), the Sixth Circuit Court of Appeals held that the failure of Cleveland suburbs to enter into a cooperation agreement for the construction of federally assisted housing did not violate federal civil rights laws or the United States Constitution. The Court relied heavily on *Palmer* v. *Thompson*, 403 U. S. 217. At page 1093, it said:

> "In the present case the failure of the suburbs to provide low-rent housing affected alike both low-income blacks and whites. There may have been a greater impact on the blacks, but that, under Palmer, is not sufficient to establish a constitutional violation.
>
> In Lindsey v. Nomet, 405 U.S. 56 (1972), the Court held that no one has a constitutional right to adequate housing. Since a person has no right to public housing in his own city, it follows that he has no such right in a municipality in which he does not reside.
>
> See also Ranjel v. City of Lansing, 417 F.2d 321 (6th Cir. 1969), cert. denied, 397 U.S. 980, rehearing denied, 397 U.S. 1059 (1970), on neutral action of referendum."

The Court also cited *Citizens Comm. for Faraday Wood* v. *Lindsay*, 362 F. Supp. 651 and its reliance on *Palmer* and *Valtierra*.

The *Faraday Wood* case was affirmed by the Court of Appeals for the Second Circuit in 507 F. 2d 1065; the Court noted

there at page 1068: "While race has long been recognized as a suspect classification, low income status has not been so recognized."

In *English* v. *Town of Huntington*, 488 F. 2d 319, at page 324 the Court said:

> "We do not think the mere fact that the occupants of these buildings are blacks and Puerto Ricans prevents the Town from taking action it would be constitutionally entitled to take if they were white. It is an unpleasant fact of life that housing like this will be occupied by poor people, and a still more unpleasant one that black and Puerto Rican citizens are over-represented in that group. Yet the Supreme Court has only recently held that the mere fact that a requirement, otherwise proper, may have a greater impact on the poor, does not render it invalid under the Equal Protection Clause, James v. Valtierra, 402 U.S. 137, 91 S.Ct. 1331, 28 L.Ed.2d 678 (1971)."

The Fair Housing Act does not prohibit discrimination based on poverty. In *Kennedy Park Homes Association* v. *City of Lackawanna*, 318 F. Supp. 669, the Court at page 694 said:

> "The Fair Housing Act of 1968 covers discriminatory conduct in fair housing situations by both public and private alleged wrongdoers. However, the nature of the discrimination proscribed under the Fair Housing Act is limited in that it does not include discrimination based on poverty."

The fact that zoning makes land more expensive and prices it out of the market for single-family homes does not render the zoning ordinances invalid. *Confederacion de La Raza Unida* v. *City of Morgan Hill*, 324 F. Supp. 895. At page 897 in that case, the Court commented on the zoning ordinance and said:

> "It does not, on its face, by its expressed purposes, by its administration, or otherwise, discriminate against anyone or racial, ethnic or income grounds . . . It does not, therefore, conflict with any of the purposes or provisions of Title VIII of the Civil Rights Act of 1968 . . ."

The Court went on:

> "Reduced to its bald essentials plaintiffs' claim is that the Federal policies on low-income housing require that poor people be allowed to live wherever they like. The fact that legitimate zoning policies, based upon valid esthetic and other considerations adopted by local authorities may make certain land expensive is, plaintiffs seem to argue unlawful. The Court finds no such manifestation of intent in the National Housing Act or otherwise."

Thus, it must be concluded that the fact that the single-family zoning classification imposed on the subject property may have a greater impact upon the poor or upon a minority group because statistically the minority group may have a greater representation among poor, does not render the zoning classification thereby invalid under the Fourteenth Amendment, the Civil Rights Act, or the Fair Housing Act.

B. There Is No Fundamental Right to Housing and the Compelling Interest Test Should Not Be Applied.

While conceding that there was no discriminatory intent or discriminatory administration with respect to the Arlington Heights Zoning Ordinance, the Court of Appeals nevertheless applied the compelling interest test in holding the refusal to rezone the subject property to be a violation of the Equal Protection Clause of the Fourteenth Amendment. We respectfully suggest that such a determination flies in the face of the repeated decisions of this Court and other federal courts throughout the country. This Court has consistently refused to classify housing as a fundamental right and has refused to apply the compelling interest test in weighing challenges to legislative action based upon alleged violations of the Fourteenth Amendment.

Most recently in the case of *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 39 L. Ed. 2d 797, the Court pointed out in a zoning case that limiting occupancy under a zoning ordinance

involved no fundamental right guaranteed by the Constitution. The Court went on to say:

> "We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be 'reasonable, not arbitrary' (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 64 L.Ed. 989, 40 S.Ct. 560) and bears 'a rational relationship to a [permissible] state objective.' Reed v. Reed, 404 U.S. 71, 76."

Here, the protection of surrounding properties from depreciation and the preservation of the zoning ordinance are clearly permissible objectives.

In *Lindsey* v. *Normet,* 405 U. S. 56, 31 L. Ed. 2d 36, the Court held that social importance was not the critical determinate for subjecting legislation to strict scrutiny. The Court recognized the importance of decent, safe and sanitary housing, but it went on to point out that there was no constitutional guarantee of access to dwellings of a particular quality or any recognition of the right of a tenant to occupy any particular dwellings. The Court concluded that, absent constitutional mandate, the assurance of adequate housing is a legislative not a judicial function. 405 U. S. 56, 74.

This Court in *James* v. *Valtierra,* 402 U. S. 137, 28 L. Ed. 2d 678, held that a legal requirement may have a greater impact upon the poor or other minority, but that does not render the requirement invalid under the Fourteenth Amendment.

To the same effect was this Court's decision in *San Antonio Independence School District* v. *Rodriguez,* 411 U. S. 1, 36 L. Ed. 2d 16, where the Court specifically held that there was no fundamental right to housing guaranteed by the Constitution. It cited *Lindsey* in pointing out that there was no constitutional mandate to assure adequate housing. The Court at 411 U. S. 1, 43, said:

> "As in the case of housing, the central importance of welfare benefits to the poor was not an adequate founda-

> tion for requiring the State to justify its law by showing some compelling state interest. See also, Jefferson v. Hackney, 406 U.S. 535, 32 L.Ed.2d 285, 92 S.Ct. 1724 (1972); Richardsen v. Belcher, 404 U.S. 78, 30 L.Ed.2d 231, 92 S.Ct. 254 (1971)."

In the *Rodriguez* case, the Court moreover rejected the concept that housing involved a suspect class.

These decisions are well summarized in the case of *Lawrence* v. *Oakes*, 361 F. Supp. 432, decided by a three judge panel in the District Court of Vermont. The Court there pointed out that, under the decisions of the United States Supreme Court, the compelling interest test is not to be applied in cases similar to that at bar. At page 440, the Court said:

> "At the outset, we reject plaintiff's argument that we should adopt the compelling interest test, a test that has been invoked by the Supreme Court only in cases in which the challenged provision impinged on a 'fundamental right,' or in which the class involved was a suspect class."

In the recent case of *Skillken & Co.* v. *City of Toledo, et al.*, Nos. 74-2116 and 74-2320, decided by the United States Court of Appeals for the Sixth Circuit on December 10, 1975, the Court was considering a suit brought under the Civil Rights Act to force the City of Toledo to rezone an area in a single-family neighborhood to permit the construction of low income housing. The Court of Appeals reversed the District Court which had ordered the rezoning. At page 20 of the slip opinion, the Court said:

> "The District Court erred in applying the compelling interest test, rather than a rational basis test, in determining whether Toledo's legislation was invalid. The ruling conflicted with our decision in *Mahaley* v. *Cuyahoga Metropolitan Housing Authority, supra.*
>
> *Lindsey* v. *Normet*, 405 U.S. 56 (1972), holds that no one has a constitutional right to adequate public housing. We rely also on *Citizens Comm. for Faraday Wood* v. *Lindsay*, 362 F.Supp. 651 (S.D.N.Y. 1973), which has

> since been affirmed by the Second Circuit Court of Appeals, 507 F.2d 1065 (2d Cir. 1974). . . .
>
> In *Palmer* v. *Thompson*, 403 U.S. 217 (1971), the Court held that a neutral policy which had a greater impact on a minority group was not invalid.
>
> The zoning laws in the present case are not inherently suspect. To apply the compelling interest test would virtually invalidate all forms of state legislation where people are affected differently.
>
> The compelling interest rule was rejected in *Village of Belle Terre* v. *Boraas*, 416 U.S. 1 (1974); *San Antonio School Dist.* v. *Rodriguez*, 411 U.S. 1 (1973); *James* v. *Valtierra*, 402 U.S. 137, 142 (1971); *Dandridge* v. *Williams*, 397 U.S. 471 (1970); *McGowan* v. *Maryland*, 366 U.S. 420 (1961); *Citizens Comm. for Faraday Wood* v. *Lindsay, supra; Ranjel* v. *City of Lansing*, 417 F.2d 321 (6th Cir. 1969), *cert. denied*, 397 U.S. 980 (1969), *rehearing denied*, 397 U.S. 1059 (1970).
>
> It is significant that no attack has been made here on Toledo's comprehensive zoning ordinance. It was neutral legislation enacted long before the controversy in the present case arose."

It is thus clear therefore that, under the decisions of this Court, the right to housing, although socially of great significance, does not involve a fundamental constitutional right and the Court of Appeals' application of the compelling interest test is inappropriate and erroneous.

The Court of Appeals relied upon its own decision in *Clark* v. *Universal Builders, Inc.*, 501 F. 2d 324 in support of its determination that Arlington Heights had an affirmative duty to ignore its own Zoning Ordinance in order to take affirmative action to resolve the alleged segregated pattern of housing in the Chicago metropolitan area. We suggest that *Clark*, even if correct, requires no such mandate. The *Clark* case was decided on the question of the propriety of granting a directed verdict for the defendants at the close of plaintiffs case. Moreover, that case involved not municipal action pursuant

to an undoubted grant of police power, but involved actions by private parties taking advantage of a dual market in real estate with respect to price. The Court held that, when allegations were made which set up a prima facie case of two prices dependent upon race for housing in the same market, there was a violation of the Civil Rights Act. No such factual situation exists here. There is no evidence to indicate that blacks do not have equal access to housing in Arlington Heights at the same price as do whites.

The respondent's own evidence indicates that 378 black households could buy housing in Arlington Heights and 473 black households could rent housing in Arlington Heights (R. 588). deVise testified that 3,244 blacks could afford to live in Arlington Heights and that the range for black households is almost as wide as white households in expenditure for housing. Moreover, deVise's testimony did not take into account blacks who might be moving from houses in other communities to apartments in Arlington Heights, or blacks moving from apartments in other communities to houses in Arlington Heights. Thus, the *Clark* case, dependent as it is upon a dual housing market with respect to price, has no application to the case at bar where there are no allegations or evidence that there is a dual pricing system in Arlington Heights.

It must be concludeed that no matter how important housing may be, access to specific kinds of housing is not a fundamental constitutional right and the compelling interest test should not be applied in determining the validity of a zoning restriction. In this connection, however, the Court's attention is directed to the footnote appearing on page 20 of the *Skillken* case above. There the Court of Appeals for the Sixth Circuit said:

> "Even applying the compelling interest test, it is clear that Toledo had a valid public interest to protect its zoning laws from wholesale nullification, a result which would disrupt the entire community and would inflict heavy losses on many innocent people. Such zoning laws, enacted under the police power, 'are essential to orderly community development.' *Forest City Enterprises, Inc. Eastlake,* 41 Ohio St. 2d 187, 189, *cert. granted* Oct. 14, 1975, 44 U.S.L.W. 3222."

II.

THE RESPONDENTS FAILED TO OVERCOME THE PRESUMPTION OF VALIDITY ATTACHING TO THE ZONING ORDINANCE OF THE VILLAGE OF ARLINGTON HEIGHTS.

The law is well established that a zoning ordinance is presumptively valid and the party assailing its validity must show by clear and convincing evidence that it is invalid. If there is any room for a reasonable difference of opinion, the court will not substitute its judgment for that of the legislative body. *Euclid* v. *Ambler Realty Co.,* 272 U. S. 365, 71 L. Ed. 303; *Village of Belle Terre* v. *Boraas,* 416 U. S. 1, 39 L. Ed. 2d 797; *McLarty* v. *Borough of Ramsey,* 270 F. 2d 232. Federal courts do not sit as super zoning boards. *Construction Industry Association of Sonoma County* v. *City of Petaluma,* No. 74-2100 (9th Cir. August 13, 1975).

The Court of Appeals conceded in its opinion that the trial court was not erroneous in concluding that the petitioners were concerned with the integrity of the Village's zoning plan. It also conceded that there was no discrimination in the enactment of the Zoning Ordinance in question. Nowhere in its opinion did the Court of Appeals suggest that the Village exercised its zoning powers with respect to the land in question in a discriminatory manner or that the respondents had succeeded in overcoming the presumption of validity attaching to the Zoning Ordinance.

Although the respondents have attempted to introduce the issue of racial discrimination and the Court of Appeals decided the issue on Fourteenth Amendment grounds, it is obvious that the only real question in this controversy is the reasonableness of

the zoning restriction, which both on its face and in fact is not aimed at any racial minority. The retention of a single-family classification on the subject property, which was surrounded by single-family homes and a high school and novitiate, which were permitted uses in the district, is a legitimate and valid exercise of the legislative discretion vested in the local authorities.

The fundamental rule was adopted by this Court in the landmark decision of *Euclid* v. *Amber Realty Co.*, 272 U. S. 365, 71 L. Ed. 303. In that case this Court specifically held that, if the validity of the legislative classification for zoning purposes is fairly debatable, the legislative judgment must be controlling. At page 388, the Court said:

> "If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control. Radice v. New York, 264 U.S. 292, 294, 68 L.ed. 690, 694, 44 Sup.Ct.Rep. 325."

In the more recent decision of *Village of Belle Terre* v. *Boraas*, 416 U. S. 1, 39 L. Ed. 2d 797, this Court summarized its broad holding in the *Euclid* case. At page 5 the Court said:

> The main thrust of the case in the mind of the Court was in the exclusion of industries and apartments and as respects that it commented on the desire to keep residential areas free of "disturbing noises"; "increased traffic"; and hazard of "moving and parked automobiles"; the "depriving children of the privilege of quiet and open spaces for play, enjoyed by those in more favored localities." Id., at 394, 71 L Ed 303, 54 ALR 1016. The ordinance was sanctioned because the validity of the legislative classification was "fairly debatable" and therefore could not be said to be wholly arbitrary. Id., at 388, 71 L Ed 303, 54 ALR 1016.

The Court in *Belle Terre* at 416 U. S. 1, at page 5, referred to *Berman* v. *Parker*, 348 U. S. 26, 99 L. Ed. 27, in noting the broad scope of the police power, indicating: "We refused to limit the concept of public welfare that may be enhanced by zoning regulations."

In *Belle Terre* the Court was concerned with an attack involving equal protection rights under the Fourteenth Amendment. As here, the District Court had upheld the constitutionality of the ordinance, but the Court of Appeals had reversed. This Court specifically rejected the claim that fundamental constitutional rights were involved in a zoning ordinance which restricted occupancy of single-family dwellings. As here, it was charged that the ordinance bars people who were uncongenial to the present residents and that it expressed the social preferences of the residents for more congenial groups. It was urged that the ordinance was contrary to an open, egalitarian and integrated society. 416 U. S. 1, 7. This Court at pages 7 and 8 of its opinion used language which is particularly appropriate and diespositive to the case at bar. It said:

> It involves no procedural disparity inflicted on some but not on others such as was presented by Griffin v Illinois, 351 US 12, 100 L Ed 891, 76 S Ct 585, 55 ALR2d 1055. *It involves no "fundamental" right guaranteed by the Constitution,* such as voting, Harper v Virginia Board, 383 US 663, 16 L Ed 2d 169, 86 S Ct 1079; the right of association, NAACP v Alabama, 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163; the right of access to the courts, NAACP v. Button, 371 US 415, 9 L Ed 2d 405, 83 S Ct 328; or any rights of privacy, cf. Griswold v Connecticut, 381 US 479, 14 L Ed 2d 510, 85 S Ct 1678; Eisenstadt v Baird, 405 US 438, 453-454, 31 L Ed 2d 349, 92 S Ct 1029. We deal with economic and social legislation where legislatures have historically drawn lines which we respect against the charge of violation of the Equal Protection Clause if the law be " 'reasonable, not arbitrary' " (quoting Royster Guano Co. v Virginia, 253 US 412, 415, 64 L Ed 989, 40 S Ct 560) and bears "a rational relationship to a [permissible] state objective." Reed v Reed, 404 US 71, 76, 30 L Ed 2d 225, 92 S Ct 251. (Emphasis added.)

Echoing *Euclid's* determination that single-family areas may be constitutionally protected, the Court at page 9 noted:

> A quiet place where yards are wide, people few, and motor vehicles restricted are legitimate guidelines in a

land-use project addressed to family needs. This goal is a permissible one within Berman v Parker, supra. The police power is not confined to elimination of filth, stench, and unhealthy places. It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and clean air make the area a sanctuary for people.

The Illinois Supreme Court has of course universally adhered to the proposition that the zoning ordinance is presumptively valid and the party assailing its validity must show by clear and convincing evidence that it is invalid. If there is any room for a reasonable difference of opinion, the court will not substitute its judgment for that of the legislative body. *Exchange National Bank* v. *County of Cook*, 25 Ill. 2d 434, 439; *Trendel* v. *County of Cook*, 27 Ill. 2d 155, 161; *Bennett* v. *Chicago*, 24 Ill. 2d 270, 273; *Sutter* v. *Village of Mundelein*, 27 Ill. 2d 589, 593.

The Supreme Court of Illinois in the recent case of *LaSalle National Bank* v. *City of Evanston*, 57 Ill. 2d 415, sustained the City of Evanston's Zoning Ordinance which, like the present ordinance, restricted residential density as applied to the subject property. The Court at page 428 of its opinion said:

> "The law governing the disposition of contentions challenging zoning classifications has been set forth in numerous decisions. As stated in *Exchange National Bank of Chicago* v. *County of Cook*, 25 Ill.2d 434, 439-40, 'It is always presumed, in an attack upon an ordinance, that the enactment is valid, and the burden of proving its invalidity falls upon the one who attacks the ordinance. (*Jacobson* v. *City of Evanston*, 10 Ill.2d 61.) Before a court will intervene it must be established by clear and convincing evidence that the ordinance, as applied to plaintiffs, is arbitrary and unreasonable and has no substantial relation to the public health, safety, or welfare. These rules are based upon a recognition that zoning is primarily a legislative function, subject to court review only for the purpose of determining whether the power, as exercised, involves an undue invasion of private constitutional rights without a reasonable justification in relation to public welfare. (*People ex rel. Joseph Lumber Co.* v. *City of Chicago*, 402 Ill. 321; *Morgan* v. *City of Chicago*, 370 Ill. 347.) Where it appears, from all the facts, that room exists for a difference of opinion concerning the reasonableness of a classification, the legislative judgment must be conclusive. (*Krom* v. *City of Elmhurst*, 8 Ill.2d 104.)"

The Illinois Supreme Court incidentally in the *LaSalle National Bank* case cited *Belle Terre* as authority.

In *LaSalle*, the Illinois Supreme Court cited *LaSalle National Bank of Chicago* v. *Cook County*, 12 Ill. 2d 40, as laying down the factors to be taken into consideration in determining the validity of a zoning ordinance. That decision has been followed in many other Illinois Supreme Court decisions. See, for example, *Garner* v. *City of Carmi*, 28 Ill. 2d 560.

The Court indicated the following facts to be taken into consideration in determining the validity of an ordinance: (1) the existing uses and zoning of nearby property; (2) the extent to which property values are diminished by the particular zoning restrictions; (3) the extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals and welfare of the public; (4) the relative gain to the public as compared to the hardship imposed upon the individual property owner; (5) the suitability of the subject property for the zoned purposes; and (6) the length of time the property has remained vacant as zoned, considered in the context of land developments in the area.

Applying each one of these criteria to the instant case, it is clear that the Zoning Ordinance of the Village of Arlington Heights, as applied to the subject property, is in all respects reasonable and constitutional. It is uncontroverted that the subject property is located in an area which is totally zoned and developed for single-family uses and schools, churches and parks, which are also permitted under the single-family classification.

In determining the validity of the particular zoning restrictions, the Court has emphasized the primary importance of the

character of nearby land uses. *Gregory* v. *City of Wheaton,* 23 Ill. 2d 402; *Jacobson* v. *City of Evanston,* 10 Ill. 2d 61; *Tuite* v. *City of Loves Park,* 82 Ill. App. 2d 214.

With respect to the extent to which property values are diminished by the particular zoning restriction, it must be pointed out that the evidence is clear that the property is worth more to the owners for single-family purposes than the contract price which MHDC is willing to pay. The contract calls for $300,000. The respondent's real estate expert, Mr. Foley, testified that the property was worth $375,000 under the existing R-3 classification (R. 471), and the petitioner's real estate appraiser, Gregory; Opelka testified that the property was worth $350,000 as zoned. It is the loss in value to the property owner which is critical, not the loss in potential value to the contract purchaser. *Jans* v. *City of Evanston,* 52 Ill. App. 2d 61, 71. Admittedly, the property is worth more for multiple-family purposes than it is for single-family purposes, but that is true in all zoning cases, and that fact does not render the restrictive zoning classification invalid. See, for example, *Bright* v. *City of Evanston,* 57 Ill. App. 2d 414, 432; *Cosmopolitan National Bank* v. *Mount Prospect,* 22 Ill. 2d 463, 470; *Jacobson* v. *City of Evanston,* 10 Ill. 2d 61, 68; *Harris Trust & Savings Bank* v. *City of Chicago,* 107 Ill. App. 2d 113, 121; *Bluhm* v. *City of Chicago,* 110 Ill. App. 2d 136.

The third criteria, the extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals or general welfare of the public, also sustains the Zoning Ordinance. There is substantial evidence in the record, through the testimony of Opelka, and the Village planning experts, Rolf Campbell and Joseph Kesler, that the proposed development would have a detrimental effect upon the nearby properties (R. 788, 793, 876, 882, 931). The Illinois Supreme Court has recognized that when a controverted zoning ordinance protects against depreciation of nearby properties, that fact alone warrants sustaining its validity. *Trendel* v. *County of Cook,* 27 Ill.

2d 155, 164; *Bennett* v. *City of Chicago,* 24 Ill. 2d 270. Moreover, as this Court recognized in *Belle Terre,* the preservation of a single family area in itself protects and promotes the health, safety, morals and welfare of the public. The respondent MHDC, here is merely a contract purchaser and there is no loss in property value to the owner of the property since the owner is contractually bound to sell the property for a sum less than its value as presently zoned.

The relative gain to the public as compared to the hardship imposed upon the individual property owner lies in the preservation of the single-family character of the area. The evidence adduced by Kesler, Opelka and Campbell is clear and convincing that the public stands to gain through the single-family zoning with respect to the preservation of neighboring property values, protection against increased traffic, and the preservation of the integrity of the zoning plan. It is well settled that a municipality may reasonably restrict increases in population density as necessary for its health, safety and welfare. *LaSalle National Bank* v. *City of Evanston,* 57 Ill. 2d 415; *Lapkus Builders, Inc.* v. *City of Chicago,* 30 Ill. 2d 304, 309; *Exchange National Bank of Chicago* v. *County of Cook,* 25 Ill. 2d 434; 441; *Village of Belle Terre* v. *Boraas,* 39 L. ed. 2d 797.

The evidence with respect to the suitability of the subject property for the purposes zoned is really uncontroverted. The respondent, MHDC's, real estate director testified that the property was suitable for single-family development (R. 74); and Foley, the real estate appraiser (R. 471), testified it was worth $375,000 for single-family purposes. Kesler, Campbell and Opelka were all of the opinion that the property was suitable for the purposes zoned. The suitability of property for the purposes zoned is a major consideration in determining the validity of a zoning ordinance. *Bennett* v. *City of Chicago,* 24 Ill. 2d 270, 274; *River Forest Bank & Trust Co.* v. *Maywood,* 23 Ill. 2d 560, 562; *Treadway* v. *City of Rockford,* 28 Ill. 2d 370, 377.

The final criteria, the length of time that the property has remained vacant in the context of surrounding development, also

supports the zoning classification. The record shows that no effort has ever been made to develop the property for single-family purposes. Instead, it has remained part of the holdings of the Viatorian Fathers and used in connection with the high school and novitiate. Failure to adduce evidence to show that efforts were made to utilize the property for single-family residences indicates that the fact the property has lain vacant is not determinative. *Manger* v. *City of Chicago,* 121 Ill. App. 2d 358; *Western National Bank* v. *Village of Downers Grove,* 122 Ill. App. 2d 107. Here, of course, we have a purchaser who entered into a contract to buy the subject property knowing its restricted zoning classification. Contention as to loss of value is of diminished persuasion under such circumstances. *Lapkus Builders* v. *City of Chicago,* 30 Ill. 2d 304, 310; *Standard State Bank* v. *Village of Oak Lawn,* 29 Ill. 2d 465, 470, *LaSalle National Bank* v. *City of Evanston,* 57 Ill. 2d 415.

Thus, no serious attempt was made by the respondents to attack the reasonableness of the Zoning Ordinance on traditional zoning grounds. The Court of Appeals clearly did not attempt to make its determination in terms of normal zoning criteria. It in fact conceded that the ordinance would be valid if the "compelling interest" test was not to be applied. We have demonstrated above that the "compelling interest" test is not applicable because access to housing, even for low-income people, is not a fundamental constitutional right. It is clear that the respondents failed to overcome the presumption of validity attaching to the Zoning Ordinance of the Village of Arlington Heights. The legislative judgment of the Village officials must clearly prevail under the holdings of this Court in *Euclid* and in *Belle Terre* and the holdings of the Illinois Supreme Court.

We respectfully suggest that the Zoning Ordinance in question was a reasonable exercise of the unquestioned legislative authority vested in the Village of Arlington Heights. The specious claim that the ordinance was racially discriminatory, was clearly not supported by the evidence and contrary to the

factual findings of the trial court who heard all the witnesses and carefully examined all the evidence. We suggest that the factual situation is not really in doubt. Absent the Fourteenth Amendment claim, there can be no question but that the zoning restriction here challenged would stand.

We suggest that there is no basis in the Fourteenth Amendment or the decisions of this Court which would require the valid legislative decisions of the local municipal body to be set aside merely to permit occupancy by a low-income group that might in fact have a higher percentage of minority members than the percentage already residing in the community. To rule otherwise would destroy the basis of zoning law in this country and elevate racial consideration beyond the legitimate needs of the police power.

III.

THE RESPONDENTS LACK STANDING TO BRING THIS ACTION.

The Village had originally filed a motion to strike the complaint and dismiss the cause alleging in part that the respondents had no standing to bring this action in the first instance (A. 21, 23). In addition to the lack of standing alleged with respect to the individual respondents, it was pointed out that the Metropolitan Housing Development Corporation was, at best, a contract purchaser and thus lacked standing to attack the validity of the Zoning Ordinance. The Clerics of St. Viator, the admitted owner in fee of the subject property, was a necessary party to the case, but at no point was made a party plaintiff.

A predecessor judge denied the motion to dismiss and the trial court heard the matter on its merits (A. 34). The trial court found however that this was not properly a class action, 373 F. Supp. 208, 209, 210. The trial court however assumed for the purposes of its decision that the respondent corporation had sufficient interest in the property to give it standing to sue, but pointed out that the respondent corporation acquired no

different status than any other corporation merely because it has been created for the purpose of developing housing for low income tenants, 373 F. Supp. 208, 209.

Two black plaintiffs, who were non-residents of Arlington Heights, testified. One, Willie Ransom, resided in Evanston, another Chicago suburb, where he lived in a five-room house with his mother and son; he had never sought any housing in Arlington Heights and lived approximately 20 miles from Honeywell, his employer; his journey to work was approximately 45 minutes. The other, Arthur Guthrie, also employed by Honeywell, had originally lived 35 minutes away from the former location of Honeywell on the west side of Chicago; when Honeywell moved to Arlington Heights, he had moved further away to the south side of Chicago where he had bought his own home, a two apartment building, one unit of which he rented to a tenant. He had never asked any realtors to be shown housing in Arlington Heights (R. 221). The trial court concluded that the individual plaintiffs did not represent a definable and manageable class.

The intervenor, Eluteria Maldonado, was a Mexican American who resided in Arlington Heights and therefore clearly could not have been denied the right to live in Arlington Heights because of the Village's zoning pattern. She resided in a single-family home and worked at a plastics factory in Arlington Heights which was 18 blocks away from her home. She either drives or takes a taxi to work. Her brother presently owns the home in which she resides, although she had previously owned it. She had resided in two other places in Arlington Heights. Her present home contains three bedrooms and she formerly owned the house, but after her divorce her brother took it over.

The Court of Appeals did not deal in any manner with the question of standing. It is clear however that this Court's recent opinion in the case of *Warth* v. *Seldin,* ..... U. S. ....., 45 L. ed. 2d 343, is dispositive of the question. It clearly indicates that one of the plaintiffs here had standing to contest the Village's action. The Court of Appeals' decision was based solely on the Fourteenth Amendment; it made no decision with respect to the Civil Rights Act or the Fair Housing Act.

It should be noted that the not-for-profit intervenor corporation (Northwest Opportunity Center) has no standing under the doctrine of *Warth* v. *Seldin.* The non-resident black plaintiffs were not members of a class and clearly have no standing based upon their own factual situation. Under *Warth* v. *Seldin,* as non-residents, they would have no interest to bring this action. Maldonado was clearly not the victim of denial of equal protection because she was residing in the Village, and thus had not been "zoned out"; Metropolitan Housing Development Corporation, the other corporate respondent, had an interest which was contingent upon rezoning and upon the ability to secure 236 financing. The trial court specifically found that this latter corporation lacked the present capacity to carry out its proposed project. (B6, B7) This finding of fact was in no way disputed by the Court of Appeals which chose not to deal with this aspect of the situation. The actual owner of the property who might have had standing was not a party to the case.

The law is clear in Illinois that a contract purchaser whose contract is conditioned on rezoning, as is here the case, has no standing to challenge the validity of a zoning ordinance. *Clark Oil & Refining Corp.* v. *Evanston,* 23 Ill. 2d 48. This rule of law is even more compelling when, as here, the plaintiffs' rights were contingent not only on zoning but on securing financing under a program which no longer exists. Thus, the whole proposal may well be moot.

With respect to the Fourteenth Amendment question, it should be noted that the Court of Appeals specifically refused to set aside the trial court's finding that the Village had not discriminated in the application of its zoning ordinance in denying the rezoning requested for the subject property. The Court specifically noted that the evidence does not require the conclu-

sion that, had the proposed development been purely commercial, the requested change would have been granted (A. 4). Thus, the equal protection argument of the Fourteenth Amendment was specifically rejected not only by the trial court, but the Court of Appeals as well.

We suggest moreover that, as noted by the trial court, the corporate respondent acquires no different status than any other corporation merely because it has been created for the purpose of developing housing for low-income tenants.

The application of the Fourteenth Amendment to a corporation in order to prevent racial discrimination is improper under the present factual situation. The corporation has no racial identity. It is conceded that it was treated exactly the same as any other property owner in similar circumstances would have been treated. This Court has frequently held that the application of the Fourteenth Amendment to corporations under such circumstances is highly suspect. See, for example, the dissenting opinion of Mr. Justice Douglas in *Wheeling Steel Corp.* v. *Glander,* 337 U. S. 562, 576; *Western Turf Assn.* v. *Hyman Greenberg,* 204 U. S. 359, 51 L. Ed. 520; and *Selover Bates & Co.* v. *Walsh,* 226 U. S. 112, 57 L. Ed. 146.

We believe that this Court should reverse the Court of Appeals on the merits. We suggest however that under the doctrine of *Warth* v. *Seldin,* these plaintiffs were not entitled to be in the Federal Court in the first instance and that our motion to dismiss, which was acted upon by the District Court on October 3, 1972, would undoubtedly have been granted had this Court's decision in the *Warth* case then been available to the trial judge.

CONCLUSION.

Based on the foregoing, we respectfully suggest that the Court of Appeals for the Seventh Circuit erred in its decision and judgment. We respectfully pray that that judgment be reversed and the decision of the trial court affirmed.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

APPENDIX.

Amendment XIV, Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Civil Rights Act of 1866 (42 U. S. C. §§ 1981, 1982)

§ 1981. All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

§ 1982. All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property.

Civil Rights Act of 1871 (42 U. S. C. § 1983)

§ 1983. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by

the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Fair Housing Act of 1968 (42 U. S. C. §§ 3601, et seq.)

§ 3604. *Discrimination in the sale or rental of housing.*—As made applicable by section 803 [§ 3603 of this title] and except as exempted by sections 803(b) and 807 [§§ 3603(b), 3607 of this title], it shall be unlawful—

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, or national origin. (Apr. 11, 1968, PL 90-284, Title VIII, § 804, 82 Stat. 83.)

§ 3605. *Discrimination in the financing of housing.*—After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, because of the race, color, religion, or national origin of such person or of any person associated with him in connection with such loan or other financial assistance or the purposes of such loan or other financial assistance, or of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given: Provided, That nothing contained in this section shall impair the scope or effectiveness of the exception contained in section 803(b) [§ 3603(b) of this title]. (Apr. 11, 1968, PL 90-284, Title VIII, § 805, 82 Stat. 83.)

§ 3606. *Discrimination in the provision of brokerage services.*—After December 31, 1968, it shall be unlawful to deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on account of race, color, religion, or national origin. (Apr. 11, 1968, PL 90-284, Title VIII, § 806, 82 Stat. 84.)

No. 75-616

Supreme Court, U. S.
FILED
MAR 6 1976
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1975

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

BRIEF FOR THE RESPONDENTS

F. WILLIS CARUSO
407 S. Dearborn Street
Chicago, Illinois 60605
(312) 341-9345

CAROL M. PETERSEN
233 S. Wacker Drive
Chicago, Illinois 60605
(312) 876-1000

ROBERT G. SCHWEMM
University Kentucky
College of Law
Lexington, Kentucky 40506
(606) 258-8998

Attorneys for Respondents and Intervening Respondents

Of Counsel:
SCHIFF, HARDIN & WAITE
Chicago, Illinois

March 6, 1976

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

PAGE

Question Presented For Review 1

Constitutional Provisions and Statutes Involved 2

Statement of Case 2

Summary of Argument 22

Argument 24

I. The Court of Appeals correctly held that Petitioners' refusal to permit the construction of Lincoln Green violates the Equal Protection Clause of the Fourteenth Amendment 24

A. The record shows that petitioners' refusal to permit the construction of Lincoln Green was racially motivated 24

B. Petitioners' refusal to permit the construction of Lincoln Green unlawfully perpetuates residential segregation 26

C. No compelling justification exists that can excuse petitioners' rejection of Lincoln Green 33

II. Petitioners' refusal to permit development of Lincoln Green violates the Fair Housing Act and Civil Rights Acts 38

A. Introduction 38

B. Arlington Heights' conduct had the effect of perpetuating segregation thereby placing a burden on Arlington Heights to show a compelling non-racial justification for the refusal 40

PAGE

C. The acts here complained of violate Title VIII, the Fair Housing Act, which is as broad as Congress could have made it, and other civil rights laws as well 43

D. This Court's interpretation of similar legislation with similar provisions shows that the complained of action violates the Fair Housing Act 47

III. All of the respondents have standing because they have a sufficient stake in the outcome of litigation 49

A. The individual respondents have standing 50

B. MHDC has standing 51

Conclusion 52

TABLE OF AUTHORITIES

Cases

Acevedo v. Nassau County, 500 F.2d 1078 (2nd Cir. 1974) 42

Adickes v. S. H. Kress & Co., 398 U.S. 144 (1970) 50

Appeal of Kit-Mar Builders, Inc., 268 A. 2d 765, 769 (1970) 36

Banks v. Perk, 473 F.2d 910 (6th Cir. 1973) 25

Barrick Realty v. City of Gary, Indiana, 491 F.2d 161 (7th Cir. 1974) 44

Barrows v. Jackson, 346 U.S. 249 (1953) 52

Buchanan v. Warley, 245 U.S. 60 (1917) 26, 52

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 26

PAGE

Citizens Committee for Faraday Wood v. Lindsay, 507 F.2d 1065 (2nd Cir. 1974), *cert. denied* 421 U.S. 948 (1975) 42

Clark v. Universal Builders, Inc., 501 F.2d 324, (7th Cir. 1974) 28, 40, 44

Crow v. Brown, 332 F.Supp. 382 (N.D. Ga. 1971), aff'd, 457 F.2d 788 (5th Cir. 1972) 31, 44

Dailey v. City of Lawton, 425 F.2d 1037 (10th Cir. 1970) 17, 25, 27, 30, 52

Euclid v. Amber Realty Co., 272 U.S. 365 (1926) ..29, 30, 35, 48, 49

Glassey v. County of Tazewell, 297 N.E.2d 235 (1973) 36

Griggs v. Duke Power Co., 401 U.S. 424 (1971) 47

Hawkins v. Town of Shaw, 461 F.2d 1171 (5th Cir. 1972) 25

Hurd v. Hodge, 334 U.S. 24 (1948) 52

James v. Valtierra, 402 U.S. 137 (1971) 27

Jones v. Alfred Mayer Co., 392 U.S. 409 (1968) 44

Kennedy Park Homes v. City of Lackawanna, 318 F. Supp. 669 (W.D. N.Y. 1970) aff'd 436 F.2d 108 (2nd Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971) 17, 25, 28, 31, 45, 47, 50, 52

Lakeland Bluff, Inc. v. County of Will, 252 N.E.2d 765 (1969) 36

Lindsey v. Normet, 405 U.S. 56 (1972) 26

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1973) 48

PAGE

Memorial Hospital v. Maricopa County, ... U.S. ....., 94 S.Ct. 1076 (1974) 40

Metropolitan Housing Development Corporation v. Arlington Heights, 517 F.2d 409 (7th Cir. 1975) ....*Passim*

Metropolitan Housing Development Corporation v. Arlington Heights, 373 F. Supp. 208 (N.D. Ill. 1974) 37

Otero v. New York City Housing Authority, 484 F.2d 1122 (2nd Cir. 1973) 44

Palmer v. Thompson, 403 U.S. 217 (1970) 43

Park View Heights Corporation v. City of Black Jack, 467 F.2d 1208 (8th Cir. 1972) 50, 52

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 52

Rabinowitz v. United States, 366 F.2d 34, (5th Cir. 1966) 25

Radio Officers v. Labor Board, 347 U.S. 17 (1953) 25

Shapiro v. Thompson, 394 U.S. 618 (1969) 40

Sisters of Providence v. City of Evanston, 335 F. Supp. 396 (N.D. Ill. 1971) 45, 52

Stalzer v. Village of Matteson, 303 N.E.2d 489 (1973) .. 37

Sullivan v. Little Hunting Park, 396 U.S. 229 (1969) 44, 52

Tillman v. Wheaton-Haven Recreation Association, Inc., 410 U.S. 431 (1973) 52

Trafficante v. Metropolitan Life Insurance Company, 409 U.S. 205 (1972) 23, 26, 29, 43, 49

United Farmworkers v. City of Delray, 493 F.2d 799 (5th Cir. 1974) 25, 32, 45

PAGE

United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974) 17, 25, 28, 30, 39, 40, 45, 46

United States v. City of Parma, P.H.E.O.H. Rptr. Par. 13, 616 (N.D. Ohio 1973) .....

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) 30, 41

Warth v. Seldin, 45 L.Ed.2d 343, 456 F.2d 343 (1975) 23, 50, 51

Wright v. City of Emporia, 407 U.S. 451 (1972) 26

Zuch v. Hussey, 366 F. Supp. 553 (E.D. Mich. 1973) 39

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

BRIEF FOR THE RESPONDENTS

QUESTION PRESENTED

Whether petitioners' refusal to permit construction of a racially integrated private housing development in a racially segregated area violates respondents' rights under the Fourteenth Amendment and the Fair Housing Act, 42 U.S.C. §§3601 *et seq.* and Civil Rights Act, 42 U.S.C. §§1981-1982 and 42 U.S.C. §1983, where the refusal has the effect of perpetuating racial segregation and is not justified by a compelling public interest.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

In addition to the statutes and Constitutional provisions set forth in Appendix A of petitioners' brief, this case involves Section 817 of the Fair Housing Act of 1968 (42 U.S.C. §3617); which provides:

> "42 U.S.C. §3617. Interference, coercion, or intimidation; enforcement by civil action.
>
> It shall be unlawful to coerce, intimidate, threaten or interfere with any persons in the exercise or enjoyment of, or on account of his having aided or encouraged any other person in his exercise or enjoyment, of any right granted or protected by §§3603, 3604, 3605 or 3606 of this title. This section may be enforced by appropriate civil action. (Apr. 11, 1968, PL 90-284, Title VIII, §817, 82 Stat. 85)."

STATEMENT OF THE CASE

Over five years have now passed since Respondent Metropolitan Housing Development Corporation ("MHDC") undertook to develop Lincoln Green and thereby provide 190 units of high-quality, integrated housing in one of the nation's fastest growing and most racially segregated suburban areas. In blocking this private effort to create an integrated community in Arlington Heights, petitioners have prevented "the only present hope of . . . even a small contribution toward eliminating the pervasive problem of segregated housing" (517 F.2d 409, 415).* Petitioners have sought to justify that action by a series of misstatements and exaggerations and by the totally unfounded claim that permitting the development of Lincoln Green would somehow undermine zoning in other municipalities throughout the country.

Contrary to Arlington Heights' repeated assertions, its zoning has no integrity and has *not* been consistently applied. Its use of zoning powers to obstruct Lincoln Green has *not* been found to satisfy even traditional zoning criteria (517 F.2d 409, 412, 415). Contrary to Arlington Heights' repeated assertions, it is *not* being asked to take any affirmative steps to construct, or plan for, or promote housing of any kind, but rather to stop "preventing or interfering with the housing proposed by Metropolitan Housing" (517 F.2d 409, 411). Contrary to Arlington Heights' assertions, its violation of respondents' constitutional and civil rights was not demonstrated *solely* by the greater impact of the action on blacks than whites, but rather by this established fact in the context of a thorough record showing petitioners' overall exploitation of local segregated housing patterns (517 F.2d 409, 412-415). In short, Arlington Heights' blithe assurances that its rejection of Lincoln Green was motivated solely by a concern for neighboring property values and the alleged "integrity" of its zoning plan simply cannot justify the racially discriminatory effects of that action by a municipality whose spectacular growth has been limited to whites, whose segregated housing stock is the most exclusionary in the Chicago area, and whose zoning plan has been amended dozens of times to permit development of thousands of high-rent apartments adjacent to single-family neighborhoods (Ps. Ex. 52, App. II 114, D. Ex. 11, App. II 118).

---

* The court of appeals decision is attached to the Petition for Certiorari herein as Appendix A and references thereto are set forth as "517 F.2d ....."; the district court decision is attached to such petition as Appendix B and references thereto are set forth as "373 F. Supp. .....". Relevant pleadings, motions, and interlocutory orders are contained in the agreed to Appendix, Volume I, and references thereto are set forth as "App. I .....". Exhibits are contained in an Appendix, Volume II, Exhibits, and references thereto are set forth as "App. II .....". References to trial transcripts and exhibits offered by the parties at trial are set forth respectively as, "Tr. .....", "Ps. Ex. .....", and "Ds. Ex. .....".

The Denial of the MHDC Application

On January 29, 1971, MHDC formally petitioned the Village of Arlington Heights, Illinois, to rezone a 15 acre parcel of vacant land in Arlington Heights on which MHDC proposed to build "Lincoln Green," a development of 190 townhouse apartments for low and moderate income persons (App. A3; Ps. Ex. 42). The petition was referred to the Plan Commission of Arlington Heights, which held public hearings on the proposed development on March 3, April 21, and June 16, 1971 (Ps. Ex. 17). At these hearings, MHDC presented extensive testimony and documentary evidence on Lincoln Green, all of which was before the Arlington Heights Board of Trustees when it voted to reject MHDC's proposal on September 28, 1974, and much of which was introduced at the trial below that resulted from the Trustees' decision.

The Background of MHDC and Its Involvement With Lincoln Green.

MHDC was organized by the Leadership Council For Metropolitan Open Communities (Tr. 270)* in 1968 as an

* The Leadership Council is a Fair Housing organization whose Board of Directors consists of business and community leaders and includes on the board: Thomas G. Ayers, Chairman, Commonwealth Edison Company; Frederick Jaicks, Chairman, Inland Steel Company; Edwin C. Berry, Johnson Products; Donald Graham, Chairman, Continental Illinois Bank; His Eminence John Cardinal Cody, Archbishop of Chicago; James Cook, President, retired, Illinois Bell Telephone; Ben W. Heineman, Chairman, Chicago Northwestern Railway; Robert S. Ingersoll, Chairman, Berg-Warner; William A. Lee, President, Chicago Federation of Labor and Union Council; C. Virgil Martin, Chairman, Carson Pirie Scott & Co.; The Rt. Rev. James Montgomery, Coadjutor Bishop of the Episcopal Diocese of Chicago; Dawn C. Netsch, Prof., Northwestern University, School of Law; Leonard Spacek, Chairman, Arthur Anderson & Co.; Julian Levy, Professor of Law, University of Chicago Law School. (Ps. Ex. 39).

Illinois not-for-profit corporation (App. I 64) for the purpose of developing housing in the Chicago metropolitan area (517 F.2d 409) for minorities particularly in nonghetto areas where such housing is not available to minorities. (Tr. 229).*

A 99-year lease and an accompanying agreement of sale entered into between the Clerics of St. Viator and MHDC specifically provided that the development would be built for low and moderate income persons under Section 236 of the National Housing and Urban Development Act of 1968 (12 U.S.C. §1715z-1), a program under which the fed-

* MHDC has developed scores of apartments and houses which have been made available to minorities under federal subsidy programs and has purchased and rented individual homes to minority families, all in suburban locations away from areas of minority concentration (Tr. 25, 26, 229-230, 263-267). MHDC's method of marketing and the purpose of the corporation insure that such housing is made particularly available to minority families (Tr. 45, 229). Thus, for example, at MHDC's multi-family development in Palatine Township, 12 families in the first 40 rentals, or 30 percent, were minorities, even though the population of the surrounding area is overwhelmingly white (Tr. 251). The Board of Directors of MHDC includes business and community leaders: Marvin Chandler, President, Chairman, Northern Illinois Gas Company; Milton O. Davis, Director Urban Development, Hyde Park Bank and Trust Company; Milton Fisher, esq., Mayer, Brown & Platt; Ross J. Beatty, McCormick Estates; Marvin Gavin, Regional Attorney, Department Health, Education and Welfare; Gordon J. Gilkey, Vice President, Carson Pirie Scott & Company; Warren G. Skoning, Vice President Real Estate and Property, Sears-Roebuck; W. D. Wilson, Illinois Bell Telephone; Raoul B. Yochim esq., Montgomery Ward & Co.; Elzie Higgenbottom, Asst. Vice President, Mortgage Department, Baird & Warner Real Estate Co.; John G. McKnight, Center for Urban Studies, Northwestern University; James W. Parker, Jr., Compliance officer, Atomic Energy Commission; Myron Reznick, Allstate Insurance.

eral government provides non-profit corporations like MHDC with subsidies in the form of reduced finance charges for the construction of rental units.* The savings are passed on to the apartment residents in the form of reduced rents, which are approximately two-thirds of the rents charged in comparable commercial properties. To insure that the program benefits low and moderate income persons, prospective tenants must meet certain eligibility requirements based on their income and family size that are established specifically by HUD (Tr. 43-44; Ps. Ex. 24). For example, the established income limitation at the time for a one-person family was $7,250 per year; for three-and-four-person families, $10,350; for five-and-six person families, $11,950; and for families of seven or more, $13,450 (*id*).

The Lincoln Green Proposal: Location, Architecture, and Land Planning.

The 15 acre site chosen for Lincoln Green is bounded on the north and west by undeveloped St. Viator property, on the east by single family homes, and on the south by Euclid Avenue, across which are single-family homes (517 F.2d 409, 411).** It is well located with respect to the central business district of Arlington Heights and is readily accessible to schools, shopping and recreation facilities, transportation, and employment opportunities (Tr. 360-63, 394; Ps. Ex. 11, pp. 4-5 and Ps. Ex. 53).

---

* In 1974 Congress passed the Housing and Community Development Act which provides subsidies for rents under Section 8 of the act. Pub. L. No. 93-383; 88 Stat. 633; 42 U.S.C. §§5301 *et seq.*

** Thus, while the entire Viatorian property, including the three story novitiate communal living facility and high school, has always been zoned "R-3", much of it is vacant and petitioners' assertion that all the land surrounding the subject property is zoned and developed for R-3 single-family use (Pet Br. 4) is wrong.

After the contracts for the Viatorian land had been executed, MHDC assembled a group of experts, including an architect, engineer, planners, and other housing consultants, to design a development for that site (Tr. 235). Many of those involved were chosen because they had special expertise in designing and planning high quality housing for low and moderate income persons (Tr. 235-36, 342-46).

The architectural plans for Lincoln Green (Ps. Ex. 7) called for 190 units in clusters of single-family attached townhouses of two stories or less with separate entrances and private patios, designed to harmonize with the desirable features of the landscape and the single-family homes to the east (Tr. 236-39; Ps. Ex. 11, p. 5; App. I 66-67).* The development was to be screened or "buffered," from the adjacent homes by trees and plants (App. I 66-67), and more than 60% of the property was to be maintained as open space, with the Lincoln Green townhouses accounting for a relatively smaller land coverage than the single-family houses to the east (*id.;* Ps. Ex. 11, p. 7; Tr. 377-78). Although Arlington Heights' multi-family zoning classification ("R-5") would permit 17 units to the acre (Tr. 878), the 190 townhouses planned for Lincoln Green amounted to less than 13 units to the acre (App. I 66-67).

Physically, the Lincoln Green units were "in many respects . . . quite similar to the single-family detached dwellings; the only salient difference being that the single-family detached dwellings are separated by narrow

---

* The architectural plans were admitted as Ps. Ex. 5 (App. I 77). The buildings would cover only 12% of the land (App. I 66) while the land coverage of surrounding homes would be much greater (App. II 113).

yards.* The kind of housing provided in each is essentially the same. The relationship of each to its neighbors is essentially the same—both have direct access to yards and the street; neither uses common entrances or halls." (Ps. Ex. 11, pp. 5-6). According to the Court of Appeals: "Lincoln Green will not be a high-rise development, but merely a cluster of two-story townhouses no higher than the surrounding single family homes" (517 F.2d 409, 419).

Although similar to neighboring houses in all material, physical respects, the Lincoln Green proposal could not be built unless it was zoned for multi-family purposes. As two members of the Arlington Heights Plan Commission noted:

> In the Village Code, there is no separate classification for townhouse development. Therefore, it of necessity accepts the classification of R-5. The proposal in no way approaches the density, architecture, or other characteristics of R-5. Professional planners designate townhouse construction of this nature akin to R-3 rather than R-5. The Lincoln Green proposal suffers from the lack of a separate classification in our ordinance (Ps. Ex. 43, p. 4).

Among the experts assembled by MHDC to work on the Lincoln Green proposal was Norman Drummond, a professional land planning consultant with special experience in developing subsidized housing (App. I 66-67; Tr. 240, 343-46). Mr. Drummond prepared a series of planning and zoning reports on the proposed development (Ps. Ex. 11, 12, 31, 32, 33 and 34), the principal conclusions of

* The map of the area introduced as an exhibit shows graphically how similar Lincoln Green is to surrounding properties in land coverage. There would in fact be much more open space in Lincoln Green (Ps. Ex. 51, App. II 113).

which were that the 15 acre parcel was best suited for R-5 zoning and that Lincoln Green was needed in Arlington Heights and was compatible with the single-family homes to the east and the overall zoning and apartment policies of Arlington Heights.

To determine what impact Lincoln Green would have on the revenues and expenditures of Arlington Heights and its schools, a tax impact study was prepared by MHDC (Tr. 243-47). As church land, of course, the Viatorian property had not previously been subject to taxation at all. The conclusions of the study were that the proposed development would make a net contribution to the Village and to the Arlington Heights schools (517 F.2d 409, 410, 411, Ps. Ex. 26, p. 5, Ps. Ex. 17 at 3 and 4).*

MHDC also contracted with Barton-Ashman Associates, Inc., a consulting firm specializing in traffic and urban planning, to do a study of the traffic and related problems that might be generated by Lincoln Green (Tr. 239). That study (Ps. Ex. 13) was completed in March 1971 and concluded that "the proposed development is expected to have a relatively minor impact on traffic in the vicinity of the site." (*id.*, p. iv). There would be better traffic control within the development than could be provided in a single-family subdivision (Tr. 380-81).

* Per-pupil revenues generated by Lincoln Green would be greater than if the site were developed for single-family use, and school officials testified that the MHDC proposal would cause no serious difficulty in terms of school capacity (Ps. Ex. 17 at 5-6). In addition, reports by Arlington Heights officials showed the adequacy of water and sewer facilities and fire protection (Pl. Ex. 15), and there would be no significant increase in the use of neighborhood parks and playgrounds because of the play areas and substantial amounts of open space retained on the site.

MHDC had consulted with the staff of the Village for preliminary reviews of the proposed development. In every instance in which changes were recommended by the staff, they were incorporated into the Lincoln Green plans (App. I-67; Ps. Ex. 15). Additional questions raised at the Plan Commission were promptly resolved by MHDC.* As the District Court found, MHDC "took the necessary administrative steps to obtain rezoning and made various changes in its proposal in an attempt to satisfy various objections which were raised by the Village's Plan Commission" (373 F.Supp. 208, 210).

The Need for Low and Moderate Income Housing and the Availability of Market Housing

In addition to being designed and planned in the most professional manner, the 190 units to be provided by Lincoln Green would begin to respond to a desperate and growing need for low and moderate income housing, especially for non-white persons, in Arlington Heights and the surrounding northwest Cook County area. Arlington Heights has recognized this need.** Indeed, MHDC's decision to develop subsidized housing on the Viatorian

* For example, when some concern was expressed regarding subsequent control and management of the development, the Board of Directors of MHDC secured offers to manage Lincoln Green from leading real estate firms and passed resolutions confirming that MHDC would retain permanent control of the property and that a citizens' advisory board selected by the Mayor of Arlington Heights would participate in its planning and management (App. I 68; Ps. Ex. 20 and 35; see also Ps. Ex. 21, 22, and 27).

** Petitioners have recommended development of 150 to 250 units of moderate income housing and 50 units of low income housing in Arlington Heights (App. I 68). At the public hearings, even the principal spokesmen opposing Lincoln Green conceded that there was a need in Arlington Heights for such a development (Ps. Ex. 43, pp. 3-4).

property was based on studies confirming the fact that the tremendous recent growth in population and employment in the northwest suburbs of Chicago had created a strong demand there for moderate priced and lower priced housing (Tr. 308).* As the Court of Appeals noted, Lincoln Green "would have been the only subsidized housing in Arlington Heights despite a great demand for such housing in that area" (517 F.2d 409, 411).

Petitioners have, however, rezoned 60 parcels of land in Arlington Heights for large commercial multi-family projects (*e.g.*, Ds. Ex. 10 and 11), 53 of which are adjacent on at least one side to single-family homes (Ps. Ex. 12 and 52). As a result, there were some 5,239 market-rent apartments in Arlington Heights in 1970 (Tr. 692); zoning existed for thousands more (Pet. Br. 4, 6).** How-

* In June 1970, for example, the Institute of Urban Life prepared a study designed to provide a conservative estimate of the demand for such housing among families with annual incomes below $7,000 and concluded that a "floor quantity" estimate of effective demand in the area amounted to 2,600 low income families and 2,850 moderate income families (Ps. Ex. 18, pp. 1-3, 19-20). MHDC also conducted its own market survey to determine the number of persons in the immediate Arlington Heights area whose incomes would qualify them for residency in Lincoln Green and determined that the local demand for low and moderate income housing could fill Lincoln Green many times over (Ps. Ex. 10; Tr. 256-59, 294-96).

** Petitioners have approved rezonings for over 90% of the apartment developments that market-rate developers have proposed to build in Arlington Heights and specifically have permitted multi-family uses adjacent to every high school except St. Viator's (Ds. Ex. 10; Ps. Ex. 33). All proposals for subsidized housing have been rejected (Ds. Ex. 10, #21 and #23; Tr. 853). While the Court of Appeals noted that this evidence did not "necessitate" a finding of discriminatory administration of the zoning ordinance, it did find, contrary to petitioners' favorite misstatement, that Arlington Heights had not been applying its zoning ordinance consistently.

ever, the minimum monthly rent of all of these multi-family units was so high that no low income person could afford them, and there were no three- or four-bedroom units available that even moderate income people can afford (Tr. 777-78, 479-80, 489-90). Indeed, the supply of available low and moderate income housing in Arlington Heights was actually declining (Tr. 483-84; also see Ps. Ex. 18, p. 19).

Residential Segregation in the Arlington Heights Area

As the Court of Appeals noted, there is a high degree of racial segregation in the Chicago metropolitan area. Specifically, the massive growth in population in Arlington Heights in the past two decades* has, with rare exceptions, been limited to whites. Of Arlington Heights 1970 population of 64,884, 27, or less than 0.1 percent, were black (App. I 68; Tr. 549-50, 597). Arlington Heights is the most residentially segregated community and has the most racially exclusionary housing stock in the Chicago metropolitan area among the municipalities with more than 50,000 residents (Ps. Ex. 50, Tr. 575).**

---

* Arlington Heights' population in 1950 was 8,768 (App. I 68) and in 1960 was 27,878 (App. I 68). At the trial in January 1974 the Village Planner estimated the Village's population to be 72,000 (Tr. 692).

** Respondents' Exhibit 50, prepared by demographer and urbanologist Pierre de Vise, shows the total 1970 population of municipalities in the Chicago SMSA with more than 50,000 people and the actual number and percentage of Negroes in each of these cities. It also contains Professor de Vise's estimate of the "potential" black population of each of these municipalities, based on the type and cost of housing in each, showing that the housing stock in Arlington Heights is the most racially exclusionary among these cities. Since the housing studied is, of course, presently occupied, this exhibit does not indicate that 3,244 blacks could presently and "automatically" be housed in Arlington Heights as petitioners imply. "It is strictly a hypothetical exercise, attempting to measure the importance of type and cost of housing in explaining the incurable segregation of blacks in the metropolitan area." (Tr. 607, 608) What it does is show that *if* there had been no racial discrimination in Arlington Heights and *if* the housing choice of blacks were based on cost alone, 5% of the existing housing stock of the Village would be occupied by blacks (Tr. 583), a figure lower than any of the other cities in the SMSA, but nevertheless an increase of over 100 times the present number of black residents in the Village (Ps. Ex. 50).

(Footnote continued)

A similar pattern of growing residential segregation has developed in the four-township northwest Cook County area of which Arlington Heights is a part. From 1960 to 1970, the population of this area increased by 219,000 people, only 170 of whom were black; the percentage of blacks in the area actually fell (Tr. 533-4, 606).*

The virtually all white growth patterns of Arlington Heights and its surrounding area contrast dramatically with the figures for the overall Chicago metropolitan area, in which the number and percentage of blacks rose substantially during the 1960's (Tr. 554-55). While their numbers grew, however, almost all minority persons in the Chicago area were still confined to segregated Chicago neighborhoods in 1970 (Tr. 545-46).

As the Court of Appeals observed, the devastating impact on minorities reflected by these statistics can be fully appreciated only in the context of the shift in employment

---

(Footnote continued)

* Most of these black workers (108), like Respondent Arthur Guthrie, live in and commute from Chicago (Tr. 529, 207, 218), and most of them, like Respondents Guthrie and Willie Ransom, work at the Honeywell Plant (Tr. 321, 208, 215, 318-19). None of the black workers at Honeywell has been able to find housing he can afford in Arlington Heights (Tr. 321-22, 220-22).

opportunities during the same period. While the City of Chicago lost 230,000 jobs, the number of jobs in the four-township Arlington Heights area rose from 100,000 to 200,000 (517 F.2d 409, 417 fn. 2).

As job opportunities have moved out of Chicago, the difficulties of blacks in finding and holding these jobs have increased (See Ps. Ex. 44 and 46; Tr. 504). In 1970, only 137 of the 13,000 people who worked in Arlington Heights were black, reflecting the fact that black workers cannot find affordable housing there.*

The relocation of jobs to Arlington Heights and the severe problems created because of the segregated housing market for both minority workers and firms seeking to hire them have been documented in a number of reports, including a study issued by the Cook County Office of Economic Opportunity, at the time of the first hearings on Lincoln Green (Ps. Ex. 44). As the Court of Appeals noted, this study confirmed that almost all of the black workers in Arlington Heights resided in Chicago and that the main problem Arlington Heights' employers faced in hiring minorities was the lack of adequate housing within a reasonable distance of their plants (517 F.2d 416, 417).*

---

* Among the major conclusions reached by this OEO study on Arlington Heights were (Ps. Ex. 44, pp. 12-14):

7. Transportation—Time and Costs:
   a. Minorities that live in Chicago and work in Arlington Heights spend between three (3) and four (4) hours each day traveling to and from work. . . .
   c. There is no public transportation linking suburban communities and, therefore, minorities that live in the suburbs must rely on car pools to get them to and from work.
   d. Considering the time and cost factors involved, the

(Footnote continued)

The Effect on Minorities of the Rejection of the MHDC Development

The effect of petitioners' refusal to permit construction of Lincoln Green will be to maintain the virtually all-white housing patterns of Arlington Heights and deprive non-white citizens who are precluded from living in the project of housing and employment opportunities (see, e.g., Tr. 292-96, 480-80, 500-03, 504-06, 591-93; Ps. Ex. 44, 45 and 50). The record established that blacks, who make up 18% of the population of the Chicago metropolitan area, constitute 40% of those eligible for Lincoln Green (Tr. 554-55, 592-93), and that MHDC's affirmative marketing efforts will attract substantial numbers of blacks to Lincoln

---

(Footnote continued)

minorities working in Arlington Heights have many problems and this situation would discourage other minorities from seeking employment in the area. These factors must also contribute to the high turnover rate which many employers reported. . . .

9. Based on the information gathered concerning incomes, time and costs of minorities, we believe there is a definite need for low and moderate income housing in the Arlington Heights area. . . .

Considering their incomes, many of the minorities working in Arlington Heights would be eligible for low or moderate income housing. The housing problem is one of the greatest obstacles confronting disadvantaged people in their efforts to improve their standard of living and live within a reasonable distance of their job. Another example of the difficulties of pairing low- and modest-income blacks with jobs in the Arlington Heights area is provided by the Minority Information Referral Center, through which 30 companies with facilities in the northwest suburbs attempt to make job openings available to minority workers living in Chicago (Tr. 497, 500-02). In a recent six month period, some 1,176 jobs were referred by businesses to this referral center, but, as its director testified, "(t)he problem is that industry cannot find adequate numbers of persons for their jobs because they have no way of getting out there or for housing." (Tr. 504, 510).

Green, as they have to other MHDC developments elsewhere (Tr. 45, 229, 251). As the Court of Appeals concluded, "if Lincoln Green were built, it, unlike the rest of the Village, would be an integrated community" and its construction might well result in increasing Arlington Heights' minority population by over 1,000% (517 F.2d 409, 417). In addition, it would act as a signal to other blacks who could afford housing in Arlington Heights that the Village was no longer closed to them, thus increasing integration in the area even more (Tr. 500-01, 583).

The Village Hearings and the Community Response

MHDC supported its proposal for Lincoln Green before the Plan Commission by having its design team present evidence on architecture, planning, and tax and traffic impact (See Ps. Ex. 17 and 42; Ps. Ex. 1-7 and 11-40), all of which were before the Plan Commission and the Trustees when they rejected Lincoln Green (Tr. 158-61, 175-5, 193). Not once at all of the Plan Commission hearings nor at the meeting of the Board of Trustees nor throughout the nine months from the time the MHDC petition was filed until it was rejected by the Trustees was there ever a single word of professional advice or testimony given in opposition to Lincoln Green. Indeed, neither the Plan Commission nor the Trustees ever received or even asked for the opinion or advice of Mr. Kesler, the Village's planner, with respect to the proposed development (App. I 68; Tr. 114-115).

Both the Commission and the Trustees were, however, besieged with advice on the "social issue" that much of the Arlington Heights community felt Lincoln Green raised. There was no question but that the tenants of the proposed development would include a substantial number of blacks and other minorities and that its construction would materially increase integration in Arlington Heights.

The Trustees were well aware that Lincoln Green was proposed as an integrated development when they rejected it (Tr. 175-185; Ps. Ex. 25). There were racially-explicit letters to the local newspaper (e.g., Ps. Ex. 48-1, 48-2, 48-3, 48-7, and 48-9). Thousands of white homeowners filed petitions in opposition to Lincoln Green and an unprecedented number of homeowners and "civic" groups representing hundreds of residents from throughout the Village spoke against the development (Ps. Ex. 17, 42, 37, and 38 [sample of petition containing 3,300 signatures]). The local supporters of the proposal were also a unique combination of religious and church groups, members of human relations committees, the League of Women Voters, and individual citizens (Ps. Ex. 17, 36). The public hearings were characterized by emotional, often racial, reactions on the part of the overflow crowds (Tr. 311-13, 316, 396-97; Ps. Ex. 48, 16 residents "terrified" by crowd).*

One letter from a local resident appearing in the Arlington Heights Herald a month before the first Plan Commission hearing began:

> "Concerning your editorial, 'Housing: An Ignored Issue': It isn't ignored, it's unwanted. We do resist low-income housing because it is a ploy to export

---

* The evidence was very similar to that in *Dailey* v. *City of Lawton,* 425 F.2d 1028(3) (10th Cir. 1970), in which purposeful racial discrimination was found. See also *Kennedy Park Homes* v. *City of Lackawanna,* 318 F.Supp. 669, 6.... (W.D.N.Y. 1970), aff'd 436 F.2d 108 (2nd Cir. 1970), *cert. den.* 401 U.S. 1010 (1970); *United States* v. *City of Black Jack,* 508 F.2d 1179 (8th Judicial Circuit, 1974).

> blacks from Chicago to integrate the suburbs. That came out forcefully in the St. Viator housing proposal." (Ps. Ex. 48-1).

Another letter complained:

> "I'm a bit tired of hearing and reading about the Low Income Housing in Arlington Heights for the benefit of our colored and Spanish-American friends in Chicago. One wonders who is running our village, our Mr. Walsh or Mayor Daley." (Ps. Ex. 48-2).

Another letter sent to all members of the Plan Commission and Board of Trustees read in part:

> "Anyone who has seen Cabrini Green and other of those projects know exactly what Mr. Chandler (the MHDC President) is exporting to Arlington Heights." (Ps. Ex. 57).

After a number of people had spoken against Lincoln Green at the initial Plan Commission hearing, the following exchange concluded the remarks from the floor, as reflected in the official minutes of the meeting:

> Rosemary Splitt, 320 N. Carlisle, Arlington Heights, was placed under oath. She stated that she heard a young girl seated behind her, this young girl being from another country, state that this was unbelievable, she didn't think this could happen in America.
>
> Mr. Zviagzne, 208 E. Oakton, Arlington Heights, was placed under oath. He stated that they have the right to choose their friends, when at a picnic they have the right to choose who they wanted to sit with, he believes in humanity, in all races, but doesn't believe he should be obliged on a moment's notice to change, for somebody to come from Chicago and tell him what he should do, what is right for him. He stated he forgave the young lady, she's too young. When you live longer you change your opinion.

> He explained that in Brazil there is a lot of mixing between colors and he hoped that someday we would live together like that, too, but not by being provoked —no shotgun wedding has lasted very long, and that is what he felt was happening. After more discussion in this regard, he concluded that the people in question don't help you, us or anybody, they just make things worse. Therefore, he hoped the committee would represent the people who live here, who plan to live, work and die here (Ps. Ex. 17, pp. 11-12 (3/13/71)).

So emotion-charged were the Plan Commission hearings and so vociferous were the crowds in opposition to those who supported Lincoln Green (Tr. 312-13) that the two Commission members who voted in favor of it felt compelled to begin their official statement with the assurance that they had voted for the development not on the "social issue," but because it represented good zoning (Ps. Ex. 43, p. 1). After the Trustees voted down the MHDC's application, Village President Walsh stated that while there was a need for low and moderate income housing in Arlington Heights, he felt "the objections of the residents is (sic) a mandate to reject this proposal" (Ps. Ex. 42, p. 6).

The Proceedings Below

This suit was then instituted by MHDC and the individual respondents against the Village of Arlington Heights and the members of its Board of Trustees. (Northwest Opportunity Center, another not-for-profit corporation, and Eluteria Maldonado were allowed to intervene as respondents.) The complaint alleged that the refusal to rezone made housing unavailable because of race, perpetuated segregation, and denied MHDC the right to use its property in a reasonable manner in viola-

tion of the Fourteenth Amendment, the Fair Housing Act of 1968 (42 U.S.C. §§3601 *et seq.*), the Civil Rights Act of 1866 (42 U.S.C.A. §1982), and the Civil Rights Act of 1871 (42 U.S.C. §1983).* The principal relief requested a declaratory judgment invalidating the Arlington Heights zoning ordinance as applied to the subject property and an injunction restraining petitioners from preventing or interfering with the development of the housing proposed by Metropolitan Housing (517 F.2d 412).

The record at trial included substantial evidence regarding the racial and employment impact of Lincoln Green, as well as most of the evidence on architecture, demand, taxes, traffic, and other zoning and planning considerations that were before the Trustees when they rejected the development. In addition, the evidence showed that petitioners had previously rezoned 60 parcels of land in Arlington Heights for large, multi-family projects (Ds. Ex. 10 and 11), most of which were adjacent to single-family homes (Ps. Ex. 12 and 52). The result, as petitioners concede, is that by 1973 there were over 6,000 high-rent apartments in Arlington Heights with proper zoning available for some 9,000 more, while not a single unit of subsidized housing has been permitted by petitioners. Thus, the zoning policies of Arlington Heights have turned the 1950 village of 8,768 persons into the most racially exclusionary and residentially segregated community in the Chi-

* Jurisdiction over the Village was based upon 28 U.S.C. §1343 (for the §1982 claim), and 42 U.S.C. §3612 (for the §§ 3604 and 3617 claim). Jurisdiction over the individual defendants, all officials of the Village, and the Village was based upon §1331 (for the Fourteenth Amendment claim), §1343 (for the §§ 1982 and 1983 claims), and §3612 (for the §§ 3604 and 3617 claims).

cago metropolitan area among municipalities with more than 50,000 residents.*

The District Court, concluding that there was no racial discrimination nor violation of constitutional or statutory rights involved, denied any relief. The Court of Appeals reversed, noting that the MHDC's development presented the only hope of easing the segregated housing patterns of Arlington Heights and holding that "under the facts of this case, Arlington Heights' rejection of the Lincoln Green proposal has racially discriminating effects" and

* Despite petitioners' recognition "in theory" of the tremendous need for low and moderate income housing in Arlington Heights (supra, p. 9), their rejection of Lincoln Green was, in effect, a refusal to permit any integrated, subsidized housing in the Village, since no economically feasible and suitable alternative site was available (517 F.2d 409, 414).

The record demonstrates that none of the vacant R-5 parcels in Arlington Heights could be used for subsidized housing. Each of these properties had been zoned multi-family for a particular commercial project (Tr. 812). Lincoln Green, or any other subsidized proposal, could not, therefore, be developed on any of them without new and different petitions being submitted to the Village for approval. The planned high-rent projects have such names as "Frenchmen's Cove," "Three Lakes," and "Randhaven" (Ds.Ex. 120, App. II 120). These sites could not be used for more modest priced housing (Tr. 830). Even more important, few of the remaining parcels were available for sale, and those that were commanded prices so high that they made a Section 236 development impossible (Tr. 813, 824-25, 830, 969, 972). For example, Mr. Opelka, petitioners' expert witness on Arlington Heights land values, testified that he did not know of any pieces of vacant R-5 land of more than 10 acres (Tr. 944-45) and that the one R-5 parcel whose value he did know was priced at $50,000/acre (Tr. 973), two and a half times the cost of the Viatorian land to MHDC. No other R-5 land was available for Lincoln Green at anywhere near the minimum cost set by the Viatorians in their effort to have low and moderate income housing built on their land (Tr. 972-73).

therefore violated the Equal Protection clause of the Fourteenth Amendment, since no compelling public interest necessitated that decision.*

SUMMARY OF ARGUMENT

I.

Lincoln Green is carefully planned as a private, high-quality townhouse development that is specifically designed to help alleviate housing segregation in the suburban Chicago area, and is compatible with neighboring single-family homes and legitimate community interests. Petitioners' refusal to permit construction of Lincoln Green has a racially segregative effect and perpetuates residential segregation in and around Arlington Heights. Since Arlington Heights' rejection of Lincoln Green was racially discriminatory and not justified by any compelling public interest, it therefore violates the Equal Protection clause of the Fourteenth Amendment.

II.

Petitioners' refusal to permit construction of Lincoln Green also violates the 1968 Fair Housing Act and other Federal Civil Rights Acts. In enacting the 1968 Fair Housing Act, (42 U.S.C. §§3601 *et seq.*), Congress prohibited all acts, public as well as private, that make housing unavailable because of race in order to replace the nation's

* Fairchild, Ch. J., dissented on a question of fact but agreed that, as a matter of law, if respondents "establish that the Village's enforcement of its zoning scheme makes construction of housing for low and moderate-income individuals not reasonably possible, the refusal perpetuates racial segregation and, absent compelling governmental justification, the respondents would be entitled to the relief they seek." (517 F.2d 409, 415).

ghettos with "truly integrated and balanced living patterns." *Trafficanti* v. *Metropolitan Life Insurance Co.*, 409 U.S. 205, 211 (1972).

Judicial interpretations and administrative interpretations of the fair housing laws establish private efforts that would substantially reduce suburban housing segregation cannot be blocked absent a compelling public interest. In addition, The Fair Housing Law should be construed like other civil rights laws to eliminate arbitrary and unjustifiable barriers to equal housing opportunity such as those erected by Arlington Heights here.

III.

The lower courts correctly treated all respondents as proper parties with adequate standing to challenge petitioners' discriminatory action. Since Lincoln Green was a specific proposal for an integrated housing development in Arlington Heights to be occupied by the individual respondents and their class, *Warth* v. *Seldin*, 422 U.S. 490, 45 L.Ed. 2d 343 (1975) does not undercut standing here and indeed indicates that the facts of this case clearly establish that respondents have standing because they have an adequate stake in the outcome of the litigation.

ARGUMENT

I.

THE COURT OF APPEALS CORRECTLY HELD THAT PETITIONERS' REFUSAL TO PERMIT THE CONSTRUCTION OF LINCOLN GREEN VIOLATES THE AMENDMENT.

A. The record shows that petitioners' refusal to permit the construction of Lincoln Green was racially motivated.

The members of the Plan Commission and the Trustees were aware that by blocking Lincoln Green they would perpetuate segregation in Arlington Heights by preventing the construction of any low and moderate income housing in Arlington Heights, thereby making housing unavailable for blacks and other minorities (517 F.2d 409, 418). Nevertheless, petitioners' brief is laced with protestations that illicit racial "motive", "intent", or "racial purpose" has not been proved, (e.g., Pet. Br. pp. 6, 7, 8, 15, 17, 22, 27).*

The record shows that members of the Arlington Heights community responded to news of the proposed MHDC development with hostile, over-flow crowds at the

* Petitioners' argument is particularly objectionable because evidence with respect to their state of mind and motivation in blocking the MHDC development was excluded at their insistence (Tr. 170-71). Despite this evidentiary limitation, the record contains substantial evidence establishing petitioners' racial motivation. For example, Village President Walsh admitted that the Trustees' rejection of Lincoln Green was in response to community opposition, in which race played a clear part (Ps. Ex. 42, p. 6).

hearings before the Plan Commission and the Board of Trustees and with angry, often racially-explicit letters and petitions in opposition to Lincoln Green (*supra*, pp. 17, 18).*

As the Tenth Circuit stated in *Dailey, supra,* at 1039, no official statement of intent to discriminate is necessary to prove a violation of the equal protection clause.

> If proof of a civil rights violation depends on an open statement by an official of an intent to discriminate, the Fourteenth Amendment offers little solace to those seeking its protection. In our opinion it is enough for the complaining parties to show that the local officials are effectuating the discriminatory designs of private individuals. *Dailey, supra,* at 1039.

Here, petitioners admitted that they blocked Lincoln Green "in response to community opposition," (Ps. Ex. 42, p. 6), a result they knew would maintain residential segregation in this area.**

* Lower courts have consistently recognized the probative value of evidence of white hostility in establishing that municipal action excluding low and moderate income housing was racially motivated. *Kennedy Park Homes* v. *City of Lackawanna,* 436 F. 2d 108 (2nd Cir. 1970); *United States* v. *City of Black Jack,* 508 F. 2d 1179 (8th Cir. 1974); *Banks* v. *Perk,* 473 F. 2d 910 (6th Cir. 1973); *United Farmworkers* v. *City of Delray Beach,* 493 F. 2d 797 (5th Cir. 1974). While discrimination may be measured solely on the basis of effect, the evidence of purpose may be taken into account. "This is not to say that proof of motive, purpose or intent may not reinforce a finding of racial discrimination or serve as a basis of such finding." *Hawkins* v. *Town of Shaw,* 461 F. 2d 1171, 1175 (197).

** The rule is that a man is held to intend the foreseeable consequences of his conduct, *Radio Officers* v. *Labor Board,* 347 U.S. 17, 45 (1953). This presumption applies to public officials as well. *Rabinowitz* v. *United States,* 366 F. 2d 34, 56 (5th Cir. 1966).

B. Petitioners' refusal to permit the construction of Lincoln Green unlawfully perpetuates residential segregation.

Although there is substantial evidence of petitioners' discriminatory purpose in their rejection of Lincoln Green here, the primary reason their action violates the Fourteenth Amendment is, as the Seventh Circuit recognized, that it has the effect of discriminating against minorities. *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715 (1961). *Wright* v. *City of Emporia,* 407 U.S. 451 (1972). When, as here, the effect of a municipality's action is to reinforce and prolong the severely segregated housing patterns in its area, that action is subject to "strict scrutiny" and cannot stand absent a compelling justification.* The result of petitioners' action is effectively to exclude minorities from and perpetuate segregation in Arlington Heights, a result this Court can not condone. See *Buchanan* v. *Warley,* 245 U.S. 60 (1917). Since the measure of state action is the *result* it achieves, it follows indisputably that municipal action that results in such perpetuation of segregation is illegal. When confronted with a situation in which petitioners *must act,* they must at least act so as

* Petitioners' emphasis on *Lindsey* v. *Normet,* 405 U.S. 56 (1972), to argue that housing is not a "fundamental interest" and therefore the "strict scrutiny" test does not apply here is misplaced. "Strict scrutiny" is required here simply because petitioners' action is racially discriminatory. *Lindsey* was a landlord-tenant case that in no way involved race and is therefore irrelevant to the equal housing opportunity values raised by this case, values which Congress has determined involve the highest national priority. See *Trafficante* v. *Metropolitan Life Insurance Co.,* 409 U.S. 205 (1972).

not to interfere with private efforts to accomplish substantial integration and so as not to perpetuate segregation.*

The Court of Appeals began its analysis of the racially segregative effect of Arlington Heights' rejection of Lincoln Green by noting that a greater percentage of blacks than whites would be injured by the municipality's action.** Contrary to petitioners' repeated assertions, however, the court did not hold that this racial disparity *alone* amounted to a violation of the Fourteenth Amendment. Indeed, the Seventh Circuit especially recognized that action such as that in *James* v. *Valtierra,* 402 U.S. 137 (1971) which discriminates on an economic basis can only be exempt from "strict scrutiny" if that action is challenged solely on the ground that proportionately more blacks are poor.***

As the Court of Appeals pointed out, however, the segregative effect of petitioners' refusal to permit construc-

* A municipality's refusal to approve zoning in order to block an integrated housing development is state action for equal protection purposes. E.g., *Dailey* v. *City of Lawton,* 425 F.2d 1037 (10th Cir. 1970).

** Blacks would be disproportionately affected insofar as blacks make up 40% of the potentially eligible population for low and moderate income housing in the SMSA while they are only 18% of the population of the SMSA. (Tr. 592-93). The suspect class affected by the action of Arlington Heights is composed of individuals with low and moderate incomes. Blacks and other minorities do make up a greater percentage of such class than they do of the population generally in the Chicago metropolitan area. (517 F.2d 409).

*** *James* v. *Valtierra,* 402 U.S. 137 (1971) is not applicable here. First, it did not involve racial discrimination, 402 U.S. at 141, and second, it did not involve governmental action but rather dealt with referendum procedures and rights not in issue in this case.

tion of Lincoln Green cannot be judged alone by the fact that its impact will fall more heavily on blacks but must also be viewed in the context of the over-all patterns of residential segregation in the Arlington Heights area. See: *United States* v. *City of Black Jack,* 508 F.2d 1179, and *Kennedy Park Homes* v. *City of Lackawanna,* 318 F.Supp. 669.

This context includes the facts that:

> historically the Chicago metropolitan area has been segregated in terms of housing . . . (and) that there exists in Chicago and its environs a high degree of racial residential segregation. As the court said in *Clark* v. *Universal Builders, Inc.,* 501 F.2d 324, 334-35 (7th Cir. 1974), "Nor do we think it beyond the strictures of judicial notice to observe that there exists in Chicago and its environs a high degree of racial residential segregation." More specifically, the population of Arlington Heights in 1970 was 64,884, but only twenty-seven residents were black.[1] The four-township northwest Cook County area, of which Arlington Heights is a part, had a population increase from 1960 to 1970 of 219,000 people, but only 170 of these were black.[2] Indeed, the percentage of blacks in this area actually decreased over this ten-year span while the percentage of the population of the entire Chicago metropolitan area that was black increased from fourteen percent to eighteen percent.*

---

* Footnotes 1 and 2:

[1] According to statistics of plaintiffs' expert, demographer and urbanologist Pierre de Vise, Arlington Heights is the *most residentially segregated community* in the Chicago metropolitan area among municipalities with more than fifty thousand residents.

[2] The impact of this statistic can be fully appreciated only in the context of the shift in employment opportunities during that same period. While the City of Chicago lost 230,000 jobs, the number of jobs in the four-township Arlington Heights area rose from

(Footnote continued)

As the Court of Appeals observed, the Lincoln Green proposal represents a unique opportunity to help reverse this trend toward increasingly segregated housing patterns, both in the entire Chicago area and more dramatically in the composition of Arlington Heights. In addition, if "Lincoln Green were built, it, unlike the rest of the Village, would be an integrated community," and "it might well result in increasing Arlington Heights' minority population by over one thousand percent" (517 F.2d at 417). Furthermore, petitioners' rejection of Lincoln Green means that no integrated, subsidized housing will be built in Arlington Heights (517 F.2d at 417), and petitioners have, therefore, rejected "the only present hope" that even a modest private effort could be made toward eliminating the pervasive problem of segregated housing in the area. *Id.* Understood in this context, petitioners' action not only disproportionately injures blacks, but it exploits and perpetuates segregated housing patterns in a way that directly violates the national housing policy of "replacing the ghettos by truly integrated and balanced living patterns." *Trafficante, supra.*

Petitioners' zoning powers are not so broad as to justify actions that perpetuate segregation. Neither *Euclid* v. *Ambler Realty Co.,* 272 U.S. 365 (1926) nor *Village of*

(Footnote continued)

100,000 to 200,000. Blacks, however, have not been able to take full advantage of these job opportunities. In 1970 only 137 of the 12,000 people who worked in Arlington Heights were black. Part of the explanation for this is that many black workers have been unable to find housing they can afford in Arlington Heights. A study issued by the Cook County Office of Economic Opportunity indicated that based on its survey almost all the black workers in Arlington Heights resided in Chicago. Moreover, the report stated that one of the main problems Arlington Heights' employers faced in hiring minorities was the lack of adequate housing within a reasonable distance of their plants.

Belle Terre v. *Boraas,* 416 U.S. 1 (1974) sanctions such unbridled municipal discretion to use these powers to reject private desegregation efforts, absent compelling public justifications. In *Euclid,* the Court sustained a zoning ordinance that prevented industrial use of certain land but recognized "the possibility of cases where the general public interest would so far outweigh the interest of the municipality that the municipality would not be allowed to stand in the way." 272 U.S. at 390. *Belle Terre* was concerned with a zoning provision designed to protect natural families from unrelated groups, not white homes from integrated townhouses nor "land use controls . . . confining minorities and the poor to the ghetto" (Marshall, J., dissenting, 39 L. Ed. 2d at 807). Neither *Euclid* nor *Belle Terre* involved racial discrimination at all, and as the Eighth Circuit held in invalidating an exclusionary zoning action similar to the one at issue here, "The discretion of local zoning officials, recently recognized in *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974) must be curtailed where "the clear result of such discretion is the segregation of low income Blacks from all White Neighborhoods." *U.S.* v. *Black Jack,* 508 F.2d 1184 (8th Cir. 1974).

All of the Courts of Appeals that have dealt with the problem of exclusionary zoning and residential segregation have recognized that compelling public interests are necessary to justify governmental actions which interfere with private efforts such as MHDC's to promote desegregation.

Dailey v. *City of Lawton,* 425 F.2d 1037 (10th Cir. 1970) is similar in many ways to the instant case. There, a developer unsuccessfully sought rezoning to a multi-family classification in order to build low and moderate income housing. In striking down the municipality's action, the

court found that the city's denial of the request was prompted by a desire to keep a large concentration of blacks from moving out of the black ghetto of Lawton into the white area in which the property was located.

In *Kennedy Park Homes Ass'n.* v. *City of Lackawanna,* 318 F. Supp. 669 (W.D.N.Y. 1970), *aff'd,* 436 F. 2d 108 (2nd Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971), the Catholic Archdiocese of Buffalo committed itself to sell land in a white section of a Buffalo suburb for the development of a low income housing project. The development was prevented when the Mayor refused to sign a sanitary sewer form needed for construction. The District Court found that "[t]he history of Lackawanna is that of a racially separate community." (318 F. Supp. at 694). The city had refused to permit private parties to break down the racial separation of the community. The court held that this refusal denied plaintiff's "equal housing opportunity" (*id.* at 694) in violation of the equal protection clause and the 1968 Fair Housing Act.*

Crow v. *Brown,* 332 F. Supp. 382 (N.D. Ga. 1974), aff'd, 457 F.2d 788 (5th Cir. 1972) is even more explicit on the duty of municipalities not to prevent private efforts aimed at desegregation. There, officials of suburban Fulton County (of which Atlanta is the core) refused to issue building permits for two private developers of public housing. The Court held:

> Given the decisions previously cited [including *Lackawanna* and *Dailey*] it is abundantly clear that, *in the absence of supervening necessity any county action or inaction intended to perpetuate or which in effect does perpetuate residential segregation in the county with attendant school segregation and dislocations of jobs and housing cannot stand. Nor can county action or*

* See *infra* for discussion of the Fair Housing Act.

> *inaction which would thwart their correction be permitted to continue.*
>
> The county defendants testified that they are aware of these conditions, yet they have come forward with no justification, compelling or otherwise, for their passivity, their refusal to cooperate, indeed their active opposition to plans designed to alleviate them. 332 F. Supp. at 392 (emphasis supplied)

The Fifth Circuit reaffirmed this principle recently in *United Farm Workers of Florida Housing Project, Inc.* v. *City of Delray Beach, Florida,* 493 F. 2d 799 (5th Cir. 1974), where it ruled that a municipality cannot refuse to provide water and sewer services to a private low and moderate income development:

> . . . [i]n the realm of federally assisted housing, local authorities have an obligation to further the national housing policy of balanced public housing and to refrain from frustrating efforts to carry out that policy. (citations omitted)

As discussed earlier, Arlington Heights is a segregated community (*supra* at p. 16) with a highly exclusionary housing stock. It is a part of a segregated region that is becoming even more segregated. Lincoln Green would be the only integrated housing in the Village and would substantially increase integration in the Arlington Heights area. Petitioners' rejection of Lincoln Green was, in effect, a refusal to permit any integrated subsidized housing in Arlington Heights. No other sites appropriate for Lincoln Green were known to the Trustees when they voted against the development (Tr. 203) and none existed within the Village (Tr. 45-47 Ps. Ex. 56).*

Thus petitioners' refusal to permit construction of Lincoln Green perpetuates residential segregation. Their

* Supra, p. 21.

action is inconsistent with their duty of non-interference with private desegregation efforts. As the Court of Appeals held, therefore, "under the facts of this case, Arlington Heights' rejection of the Lincoln Green proposal has racially discriminatory effects . . . [and] could be upheld only if it were shown that a compelling public interest necessitated the decision" (517 F.2d 409, 415).

C. No compelling public justification exists that can excuse petitioners' rejection of Lincoln Green.

The Court of Appeals correctly found that there was no compelling interest served by Arlington Heights' refusal to permit construction of Lincoln Green.

> As we have already indicated, the Village has not even been consistent in applying its zoning plan when considering requests for zoning changes to R-5. Moreover, even if a municipality's desire to limit multi-family dwellings to instances which they might serve as a traditional buffer zone could ever be a compelling interest, it is certainly not in this case (517 F. 2d 409, 415).

The court recognized that the low-rise structures proposed were compatible with surrounding housing and the expressed planning policy would at best have only minimal application.

> As noted by two dissenting members of the Arlington Heights Plan Commission, in terms of density, architecture and most other characteristics, such townhouses are more similar to R-3 dwellings than R-5 buildings. The planning rationale behind the buffer zone policy has only minimal applicability to this type of low-rise, open-space development. It is not a sufficiently compelling interest to justify the racially discriminatory effect (517 F.2d 409, 415).

As the court found, petitioners' inconsistent application of its claimed "buffer policy" could not justify the racially discriminatory effects present here (517 F.2d 409, 415).

The Court next dealt with the supposed diminution in surrounding property values that petitioners claimed would result from Lincoln Green and found such diminution does not constitute a compelling interest:

> Nor do we find that the decision can be supported by the fact that neighboring property values might be diminished by as much as five to ten percent as asserted by respondents' witness. It is questionable whether this purely monetary consideration could be a compelling interest. In this instance it is not.
>
> * * *
>
> Not only have there been other variances in Arlington Heights, but the neighboring residents certainly could not expect that the zoning plan would always be adhered to even when a racially discriminatory effect would result (517 F.2d 409, 415).

Petitioners' argument that an affirmative duty has been imposed on Arlington Heights is not well founded. (Pet. Br. 25). What is sought here is the right to build Lincoln Green and the order of the Court of Appeals merely allows MHDC to construct the proposed integrated housing. No affirmative duty or obligation is being placed on Arlington Heights but rather a duty of non-interference.

Petitioners also erroneously suggest that rulings in certain state court cases (Pet Br. 30-34) set forth criteria which, when applied to the facts here, can be claimed as support for the segregative decision. However, when the criteria are applied the results do not establish a compelling or substantial reason for allowing a decision which results in a segregative effect.*

* The evidence shows that the plan referred to was passed in 1959 and that most of the homes were built prior thereto (Tr. 812).

Petitioners have not offered any legitimate justification which courts confronting the issue of exclusionary zoning have recognized as satisfying the strict scrutiny test. Rather, they have simply offered a preservation of local property values defense and reliance on zoning "integrity" (517 F.2d 421). That defense is not enough.

As anticipated by the Court's observation in *Euclid,* in recent years less tolerance has been shown for municipal action which serves only the parochial demand of those in the immediate vicinity to the detriment of the

* The criteria set forth by petitioners as that used by many state courts to test zoning validity do not apply here where Fourteenth Amendment and Fair Housing Act claims are involved. Even if applied, they would allow the decision of the Seventh Circuit to stand: 1. The existing uses and zoning of nearby property: the zoning of surrounding properties is not persuasive against the proposal since the planned townhouses are much like the single family. 2. The extent to which property values are diminished by the particular zoning restrictions: the testimony on diminution is not enough to support a reversal. 3. The extent to which the destruction of property values of the plaintiffs promotes the health, safety, morals and welfare of the public: the project is highly related to public welfare so the refusal did not promote health, safety, morals or welfare. 4. The relative gain to the public as compared to the hardship imposed upon the individual property owner: the gain to the public is high while hardship to individuals is insignificant. 5. The suitability of the subject property for the zoned purposes: the respondents showed the multiple-family use is the highest and best use. 6. The length of time the property has remained vacant as zoned, considered in the context of land developments in the area: the Clerics of St. Viator own the entire parcel which makes it unique. No evidence was solicited with respect to their reasons for not acting on the property previously.

entire region. Courts have recognized the necessity for considering the rights of non-residents as well as residents in assessing the reasonableness of suburban zoning actions.

As the Pennsylvania Supreme Court noted in *Appeal of Kit-Mar Builders, Inc.*, 268 A. 2d 765, 769 (Ba. 1970):

> We fully realize that the overall solution to these problems lies with greater regional planning; but until the time comes that we have such a system, we must confront the situation as it is. The power currently resides in the hands of each local governing unit, and we will not tolerate their abusing that power. . . .

Illinois courts have explicitly recognized housing needs as an important consideration in judging the reasonableness of a zoning decision which excludes certain types of housing.

In *Lakeland Bluff, Inc.* v. *County of Will*, 252 N.E. 2d 765 (Ill. App. 1969), a county's refusal to rezone for a mobile home park was overturned. The court found that the plaintiff had shown a need for low-cost housing in the area, that mobile homes would help satisfy that need, and that this "was an element which should be considered in determining the reasonableness of the restrictive zoning ordinance." 252 N.E. 2d at 770. See also *Glassey* v. *County of Tazewell*, 297 N.E. 2d 235 (Ill. App. 1973). The evidence here clearly establishes that a desperate area-wide need for low and moderate income housing exists.

Petitioners ignore this need in contesting the reasonableness of the decision of the Court of Appeals. Instead they rely on a mechanistic formula for determining reasonableness, but even following that approach, the denial of zoning is improper for several reasons. First, Lincoln

Green is consistent with the existing uses and zoning of nearby property. As the record demonstrates, the proposed development is complementary to the surrounding housing, and only the Village's absence of an appropriate zoning classification scheme forced respondents to seek a zoning classification which would allow the individual townhouse type construction (517 F. 2d 410).

Second, the District Court found that "Plaintiffs did prove that the 'highest and best use' of this property from an economic standpoint is for multi-family dwellings." (373 F.Supp. 209).*

Third, and most important, the public interest considerations favor development of Lincoln Green.

As stated by the court in *Stalzer* v. *Village of Matteson*, 303 N.E. 2d 489 (Ill. App. 1973), the use of property cannot be restricted or limited merely because neighboring property owners so desire, or because they think it might protect the value of their residences. In upholding the plaintiffs' right to develop his parcel for a planned unit multi-family development there, the court stated:

> No gain of any kind to the *general public* appears from the R-1 zoning. It would appear that the public interest would be better served by creation of an apartment project which would make more than 200 apartments available for family use at reasonable rentals. (emphasis added) 303 N.E. 2d at 495.

The public interest will be served by Lincoln Green, which will begin to satisfy the desperate need for housing for

---

*Any diminution in neighboring home values attributable to the proposed development would be merely a reflection of the prejudice of the local homeowners, as the District Court acknowledged when it noted that the hostility of these residents may have been a factor. 373 F. Supp. 209.

low and moderate income persons outside the inner-city in a booming area rich in jobs.*

No compelling justification exists for the refusal to permit construction of Lincoln Green and therefore such refusal is a violation of the Equal Protection Clause of the Fourteenth Amendment.

II.

PETITIONERS' REFUSAL TO PERMIT DEVELOPMENT OF LINCOLN GREEN VIOLATES THE FAIR HOUSING ACT AND CIVIL RIGHTS ACTS.

A. Introduction

The Court of Appeals concluded that Arlington Heights' rejection of the Lincoln Green proposal violated the Equal Protection Clause since it had racially discriminatory effects which could not be adequately justified by petitioners. The Court below did not go on to consider the other bases on which petitioners' action was also challenged. Its conclusion, however, that the rejection of Lincoln Green would have the effect of perpetuating residential segregation in

* In support of the decision below, the District Court referred to the "integrity of the Village's zoning plan." The evidence shows, however, that the Arlington Heights comprehensive plan was developed in 1959 (Tr. 812) when its population was about one-third its present size and at a time when planning for residential uses was limited to single-family. (Tr. 812). As the evidence showed, the only multi-family residences built in Arlington Heights are the product of rezonings such as that requested by the respondents. Even with the advent of substantial industry in the area, no provision *whatsoever* was made to update the Village's comprehensive plan to accommodate the needs of the low and moderate income persons working there.

Arlington Heights is also sufficient to establish a violation of the 1968 Fair Housing Act, whose purpose is to "replace the ghettos by truly integrated and balanced living patterns". *Trafficante* 409 U.S. 205, 211.

Specifically, petitioner's conduct violates §§804 (a) and 817 of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, 82 Stat. 81, 42 U.S.C. §§3601 et seq.) and the Civil Rights Act of 1866 (42 U.S.C. §1982) by making housing for minority persons unavailable* and by interfering with the provision of housing opportunities to such persons.** E.g., *United States* v. *City of Black Jack, Missouri,* 508 F. 2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975). Apart from whatever affirmative responsibilities petitioners may have, based on their exploitation of the patterns of severe and growing residential segregation in Arlington Heights, the municipality has *at least* the duty under the Fair Housing Act to use its zoning powers so as not to interfere with private efforts which

* In language "as broad as Congress could have made it" (e.g., *Zuch* v. *Hussey,* 366 F. Supp. 553, 557 (E.D. Mich. 1973), §804 (a) (42 U.S.C. §3604 (a)) makes it unlawful to "make unavailable . . . a dwelling to any person because of race." ("Dwellings" include the type of "vacant land which is offered for sale or lease" (§802 (b)) that is involved here. See *United States* v. *City of Black Jack, Missouri, supra.*) Under that provision all practices "which have the effect of denying dwellings on prohibited grounds are unlawful." *United States* v. *City of Parma,* P.H.E.O.H. Rptr. Para. 13,616 N.D. Ohio 1973.

**§817 (42 U.S.C. §3617) makes it unlawful to "interfere with any person in the exercise or enjoyment of . . . or on account of his having aided or encouraged any other person to the exercise or enjoyment of any right granted or protected by sections 803, 804, 805, or 806."

would appreciably reduce segregation within its jurisdiction. *Id.**

B. Arlington Heights' conduct had the effect of perpetuating segregation, thereby placing a burden on Arlington Heights to show a compelling non-racial justification for the refusal.

In recent decades, Arlington Heights has become a large, 99.9% white city through zoning and other municipal decisions permitting the development of thousands of high rent housing units that have not been made available to minorities. *Clark, supra.* As the Court of Appeals concluded, petitioners have not merely ignored the segregated housing patterns in their area; they have exploited them. Here, they have, without compelling justification, obstructed the only development which would have provided minorities with low-cost, affirmative marketed housing units, the only development that could have appreciably reduced segregation within the Village. It was precisely this type of municipal zoning interference with private efforts to develop and market low and moderate income housing for minorities in places where those opportunities had been unavailable before that the Eighth Circuit held violated the Fair Housing Act in *United States* v. *City of Black Jack, Missouri, supra.*

The justifications advanced by Arlington Heights for its refusal to approve Lincoln Green are not persuasive. Since

---

* Contrary to the suggestion often made by petitioners, respondents never claimed that they had a "right to housing" or a right to live anywhere in particular. *They are not asking Arlington Heights to build housing for them.* (Compare *Shapiro* v. *Thompson,* 394 U.S. 618 (1969) and *Memorial Hospital* v. *Maricopa County,* 94 S.Ct. 1076 (1974), which did require that the state or county spend money on the injured class, with the record here which establishes that Arlington Heights will benefit financially if Lincoln Green is built.)

the development would significantly reduce segregation by increasing the number of blacks in the Village ten times over, it comes within the protection of the Fair Housing Act and petitioners' efforts to obstruct it should be enjoined. As the Eighth Circuit observed in *Black Jack,* the Fair Housing Act requires removal of the artificial, arbitrary, and unnecessary barriers to housing opportunities when those barriers operate invidiously to discriminate on the basis of race. "The discretion of local zoning officials, recently recognized in *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974), must be curtailed where the clear result of such discretion is the segregation of low income Blacks from all White neighborhoods [citing cases]." 508 F.2d at 1184.

Petitioners misconstrue their responsibilities under the Fair Housing Act and the decision below when they argue that the logic of this decision would dictate that there can no longer be any single-family zoning district in any municipality if a developer seeks to build housing which he can show might be occupied by a greater percentage of a minority group than presently existed in that municipality. (Pet. Br. at 16) On the contrary, all that is to be determined here is that the single-family zoning classification of a long vacant parcel, such as the one here, cannot be used to frustrate a unique development which the developer proves, because of the nature of the housing and of his marketing program, would *in fact* be significantly more integrated than the community and thereby would *appreciably* decrease segregation in the community when the municipality has no compelling reasons to prevent the development from going forward.

Petitioners also misconstrue the responsibilities imposed by the Fair Housing Act and the decision below when they argue that the Seventh Circuit determined "that Arlington Heights has an affirmative duty to ignore its own Zoning

Ordinance in order to take affirmative action to resolve the alleged segregation pattern of housing in the Chicago metropolitan area." (Pet. Br. at 25) The law of this case imposes no affirmative duty on Arlington Heights. It seeks to prevent municipal interference with MHDC's private creation and distribution of desegregated housing opportunities for minorities, not to impose upon Arlington Heights an affirmative duty to create housing opportunities or incur any cost in the creation of such opportunities by the private sector.

The Second Circuit has explicitly recognized this distinction. Thus, while refusing to impose upon a county "an affirmative duty to construct housing," *Acevedo* v. *Nassau County,* 500 F. 2d 1078, 1081 (2d Cir. 1974) or to order a city affirmatively to take steps to insure that a subsidized housing development would be built, *Citizens Committee for Faraday Wood* v. *Lindsay,* 507 F. 2d 1065 (2nd Cir. 1974), *cert. denied,* 421 U.S. 948 (1975), it reaffirmed that Courts should continue to enjoin ". . . the governmental obstruction of private projects beneficial to minority groups or to integration" (*Acevedo,* 500 F. 2d at 1081). In language particularly relevant to the case at bar, the Second Circuit concluded that:

> . . . the City of Lackawanna was clearly segregated . . . Against this background we held that the city could not, absent a compelling interest, thwart the efforts of a private organization to build housing for low-income families in the white area of the city by, among other things, refusing to accede to a reasonable rezoning request. Other courts have reached similar results. Faraday Wood, 507 F. 2d at 1069 (Citations omitted).

No affirmative duty is sought to be imposed upon Arlington Heights; the injunction sought is prohibitory, not mandatory. Arlington Heights will not be asked to incur

any costs of the development.* All that is sought is an injunction restraining the respondents from interfering with the development of Lincoln Green.

C. The Acts here complained of violate Title VIII, the Fair Housing Act, which is as broad as Congress could have made it, and other civil rights laws as well.

Congress has declared that the purpose of the Fair Housing Act is "to provide, within constitutional limitations, for fair housing throughout the United States" (42 U.S.C. §3601), and this Court has made clear that the Act should be given a "generous construction" to effectuate its purpose of replacing "the ghettos by truly integrated and balanced living patterns." *Trafficante* v. *Metropolitan Life Insurance Co.,* 409 U.S. 205, 211 (1972).** HUD has administratively established criteria to provide for integration.***

*As the Court of Appeals noted, the development would have a positive tax impact upon the Village and the school district (see *supra* at 9); they will both receive more in tax dollars from the development than they will expend in servicing Lincoln Green and its residents. *Compare Valtierra,* 402 U.S. 137, 143 and *Palmer,* 403 U.S. 217, 228-30, where the majority and two concurring justices, respectively, expressed reluctance in granting relief because the municipality would be forced to incur perpetual tax loss.

** Clearly, Congress saw the 1968 Fair Housing Act as a vehicle to eliminate the barriers that prevent movement by blacks into white areas and to remedy segregated housing patterns and the problems they cause—segregated schools, the unavailability of suburban employment opportunities to minorities, and the alienation of white and black Americans due to "lack of experience in actually living next" to each other. 114 Cong. Rec. 2274-76.

See also the further discussion by Senator Mondale at 114 Cong. Rec. at 2279-80, 9559, and 9590.

***HUD's Project Selection Criteria applicable to FHA §236 Housing 24 C.F.R. part 200, P.H.E.O.H. Rptr. Para. 4311 include requirements that need for subsidized housing be considered in site selection along with providing minority opportunities outside existing areas of minority concentration.

In construing the Civil Rights Act of 1866 to prohibit housing discrimination, this Court declared that

> . . . When racial discrimination herds men into ghettos and makes their ability to buy property turn on the color of their skin, then it too is a relic of slavery. *Jones* v. *Mayer Co.*, 392 U.S. 409, 442, 443 (1968).

The next year, this Court reaffirmed that a "narrow construction of the language of §1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by it. *Sullivan* v. *Little Hunting Park,* 396 U.S. 229, 237 (1969).*

Lower courts have consistently reaffirmed that the purpose of the Fair Housing Act is to foster residential integration. As the Second Circuit has observed, the goal is "open, integrated residential housing patterns and to prevent the increase of segregation, in ghettos, of racial groups whose lack of opportunities the Act was designed to combat." *Otero* v. *New York City Housing Authority,* 484 F.2d 1122, 1134 (2nd Cir. 1973); see also *Crow* v. *Brown,* 332 F. Supp. 382, 391 (N.D. Ga. 1971), *aff'd,* 457 F. 2d 788 (5th Cir. 1972); *Barrick Realty* v. *City of Gary,* 491 F.2d 161, 164 (7th Cir. 1974).

---

* §1982 is designed to eliminate housing practices, whether overtly discriminatory or not, which have the unjustified effect of perpetuating residential segregation. In *Clark* v. *Universal Builders,* 501 F.2d 324, 331 (7th Cir. 1974), *cert. denied,* 419 U.S. 1070 (1974), sellers who exploited the dual housing market by selling to blacks at inflated prices were held to have violated §1982 in part because their actions "prolong and perpetuate a system of racial residential segregation. . . ." (citation omitted). The court went on to rule that discrimination against black citizens could not be perpetuated, even if it was not of the actor's own making and even if the acts having the discriminatory effect were "well-intentioned, good-faith efforts. . . ." 501 F.2d at 332.

Specifically, the lower courts have not shirked from carrying out this clear Congressional intent by holding that municipal exclusion of low and moderate income housing violates the 1968 Act, where, as here, that municipal action has the effect of perpetuating residential segregation and is not justified by compelling state interests. *United States* v. *City of Black Jack, supra, Kennedy Park Homes* v. *City of Lackawanna,* 318 F. Supp. (W.D.N.Y. 1970), *aff'd,* 436 F. 2d 108 (2nd Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971); see also *Sisters of Providence* v. *City of Evanston,* 335 F. Supp. 396 (N.D. Ill. 1971); *cf. United Farm Workers of Florida Housing Project, Inc.* v. *City of Delray Beach,* 493 F.2d 799 (5th Cir. 1974).

In *Black Jack,* for instance, the Eighth Circuit struck down a zoning ordinance that prevented construction of a subsidized, integrated development such as Lincoln Green in an all white area, despite a finding below that the municipality had not been shown to have acted with racially discriminatory motives. After reviewing the broad scope and remedial purposes of the Fair Housing Act, the Court of Appeals held that the respondent in such a case

> "need prove no more than that the conduct of the defendant actually or predictably results in racial discrimination; in other words, that it has a discriminatory effect . . . The respondent need make no showing whatsoever that the action resulting in racial discrimination in housing was racially motivated. Effect, not motivation, is the touchstone, in part because clever men may easily conceal their motivations, but more importantly, because
>
> . . . [w]hatever our law was once, . . . we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of willful scheme.

United States v. *City of Black Jack, Missouri,* 508 F.2d at 1184-1185 (citations and footnotes omitted.)

The Eighth Circuit then went on to reverse the lower court's determination that the challenged zoning ordinance had no discriminatory effect. The trial judge in *Black Jack* had focused, as petitioners attempt to do here, *only* on the statistics with respect to eligible residents that showed that the obstruction of the development would have a slight disproportionate impact on minorities. The Court of Appeals there, as the Seventh Circuit did here, noted that such a myopic view failed to take into account either the "ultimate effect" or the "historical context," which specifically included assessment of the municipality's action in light of the overall segregated housing patterns in the greater St. Louis area. 508 F.2d at 1186. Although Black Jack had not caused these segregation patterns to develop (as petitioners foreswear responsibility here),

> "Black Jack's action is but one more factor confining blacks to low-income housing in the center city, confirming the inexorable process whereby the St. Louis metropolitan area becomes one that has the racial shape of a donut, with the Negroes in the hole and with mostly whites occupying the ring . . ." *id.*

Since the proposed development "was particularly designed to contribute to the prevention of this prospect so antithetical to the Fair Housing Act" (*id.*), since there was ample proof that many blacks would live in the development and since the "exclusion of the townhouses would contribute to the perpetuation of segregation in a community which was 99 percent white" (*id.*), the Eighth Circuit de-

termined that the zoning decision violated §804(a) and §817 of the Fair Housing Act.*

D. This Court's interpretation of similar legislation with similar provisions shows that the complained-of action violates the Fair Housing Act.

This Court has yet to review an exclusionary zoning case under the Fair Housing Act. Its determination to construe similar remedial legislation in an expansive manner to effectuate the Congressional commitment to equal opportunity, however, strongly suggests that the Attorney General and the Eighth Circuit are correct in interpreting §804(a) and §817 to prohibit petitioners' obstruction of Lincoln Green. In *Griggs* v. *Duke Power Co.,* 401 U.S. 424 (19....), for example, a unanimous court invali-

---

* In both *Black Jack* and *Lackawanna, supra,* the Attorney General, who has enforcement responsibilities under the Act in certain circumstances (see 42 U.S.C. §3613), successfully argued that §§ 804 (a) and 817 should be construed in precisely the fashion suggested by respondents here. In *Lackawanna,* for example, the United States intervened in a challenge to a municipal zoning action which had prevented a low and moderate income housing development from being built in a white area, and took the position that:

> . . . [t]he contention that this is not an "interference" case within the meaning of 42 U.S.C. 3617 loses all force. The city interfered with and prevented the implementation of the plan which would have allowed a racially integrated housing development in a white area, and, if it is shown that this was on account of race or color (either through purpose or effect), an interference case is established. By the same token, the city made dwellings unavailable to Negroes within the meaning of 42 U.S.C. 3604(a) for, were it not for the city's action, the land would have been obtained and in all probability the homes would have been constructed. What needs to be proved—and, in our view, has been proved—is that the actions were discriminatory. (Brief for the United States at 29-31).

dated a job test that excluded a higher proportion of blacks than whites from access to employment opportunities by construing the Equal Employment Opportunity Act (Title VII of the Civil Rights Act of 1964. 42 U.S.C. §§ 2000 *et seq.*) to require the "removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to discriminate on the basis of racial or other impermissible classification." *Id.* at 431. Title VII was not to be limited to racially-explicit classifications alone. "The Act prescribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation." *Id.* Indeed, "good intent or absence of discriminatory intent does not redeem employment practices or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability. . . . Congress directed the thrust of the Act to the *consequences* of employment practices, not simply the motivation." *Id.* at 432. See also *McDonnell Douglas Corp.* v. *Green,* 93 S.Ct. 1817, 1823 (1973), where Justice Powell wrote that the purpose of Title VII is "to eliminate those discriminatory practices and devices which have fostered racially stratified job environments to the disadvantage of minority citizens" and noted that "Griggs . . . deals with . . . devices which however neutral on their face operate to exclude many blacks." *Id.* at 1826.

The operative language of the Fair Housing Act and the Equal Employment Opportunity Act are virtually identical in describing the discriminatory practices that they prohibit. §804(a) makes unlawful housing practices performed "because of race." Title VII prohibits employment practices performed "because of an individual's race." (42 U.S.C. §2000e-2(a) (1) and (2)). This Court

in *Griggs* ruled that Title VII prohibits the use of employment tests that disproportionately exclude blacks from job opportunities, since they discriminated against blacks "because of . . . race." The same language in Title VIII should be similarly construed to prohibit housing practices that exclude minorities from desegrated housing opportunities and that create the "built-in headwinds" and "racially-stratified . . . environments" that in the employment field are no longer permissible.*

In summary, then, the language and legislative history of the Fair Housing Act, its interpretation by the courts and the Attorney General, its administrative and judicial interpretation and judicial construction of similar civil rights legislation mandate a conclusion that §§ 804(a) and §817 invalidate petitioners' decision to prevent construction of Lincoln Green since the decision denies minorities desegregated housing opportunities in an all-white area without compelling public justifications.

III.

ALL OF THE RESPONDENTS HAVE STANDING BECAUSE THEY HAVE A SUFFICIENT STAKE IN THE OUTCOME OF THE LITIGATION.

This Court held in *Trafficanti,* the words of the Act showed "a congressional intention to define standing as

---

* Just as Title VII was designed to "achieve equality of employment opportunities, *Griggs,* 401 U.S. 424, 429, so Title VIII was designed to insure equality of housing opportunities. Indeed, under the facts here and in similar exclusionary zoning cases such as *Black Jack* that dramatically demonstrate how access to growing numbers of jobs may turn largely upon access to desegregated suburban housing, it would defeat the purposes of Title VII if the Fair Housing Act were held inapplicable here, since not only would minorities' opportunities to live in Arlington Heights be prevented, but their chances of working there would be limited as well.

broadly as is permitted by Article III of the Constitution." 409 U.S. at 209. Petitioner did not present the question of standing to the Court of Appeals for review, and, accordingly, the Court of Appeals did not consider the issue. This Court generally does not consider issues neither raised nor considered by the Courts of Appeals. See *e.g., Adickes* v. *S. H. Kress and Co.*, 398 U.S. 144, 147, n. 2 (1970) and cases cited. In any event, all of the respondents have standing; numerous exclusionary zoning cases establish that both the corporate and individual respondents here have a sufficient stake in the outcome of this litigation to make them proper parties. *E.g., Park View Heights Corp.* v. *City of Black Jack*, 467 F. 2d 1208, 1212-1214 (8th Cir. 1972); *Kennedy Park Homes Ass'n.* v. *City of Lackawanna*, 436 F. 2d 108, 111-112 (2d Cir. 1970), *cert. denied.*

A. The individual respondents have standing.

The individual respondents are minority citizens of the United States unable to find housing they could afford in Arlington Heights (see, *e.g.*, Tr. 220-2). They would be eligible for Lincoln Green. (see, e.g. Tr. 43-44; Ps. Ex. 24 (Ex. B); and Tr. 207-208). Under *Warth* v. *Seldin*, 45 L. Ed. 2d 343 (1975) they have standing to sue since "absent the (petitioners') restrictive zoning practices, there is a substantial probability that they would be able to . . . lease in (Arlington Heights) and that, if the court affords the relief requested, the asserted inability of (respondents)

---

* Petitioners assert, without record reference, that "the trial court found (that) Ransom and Guthrie are not even proper parties to this action." (Brief 46). The trial court made no such finding, but rather adjudicated their substantive rights and thereby treated the two as proper parties.

would be removed." *Warth*, 45 L. Ed. 2d 343, 358. Unlike the *Warth* plaintiffs whose inability to live in Penfield stemmed not from an unavailability of low and moderate income housing, which they could not afford* (except for Reyes, whose income was too high; see *Warth* at 359, n.16), but from the "economics of the area housing market" which prevented the construction of housing they could afford, the inability of the individual respondents in the instant case to live in Arlington Heights stems directly from the fact that the petitioners have interfered with the private housing market and prevented the construction of Lincoln Green.

B. MHDC has standing.

Respondent MHDC also has standing. It can assert its own rights, since it is being directly harmed by petitioners' conduct. Its corporate purpose is to build low and moderate income housing, and the petitioners are directly frustrating that purpose. It has also expended over $38,000 on the proposal.

It also has standing to raise the rights of the potential tenants, since they are being harmed by petitioners' conduct. See *Park View Heights*, 467 F. 2d 1208, 1213-14; *Lackwanna*, 436 F. 2d 108, *cert. denied*, 401 U.S. 1010; *Dailey*, 425 F. 2d 1037, ...; and *Sisters of Providence*, 335 F. Supp. 396. This Court has held in a number of housing cases that the provider of housing has standing to raise the interests of the black customer of the housing when the provision is being interfered with. See *Sullivan*,

---

* There was no indication that they "had the resources necessary to acquire the housing available in the projects" which may have been built, *Warth* at 359, n. 16, since there was "not the slightest suggestion that they would be adequate, and of sufficiently low cost, to meet the petitioners' needs," *Warth* at 359, n. 15.

petitioner's

supplemental

brief

Supreme Court, U. S.
FILED
SEP 16 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' SUPPLEMENTAL BRIEF.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

Supreme Court of the United States

OCTOBER TERM, 1976.

No. 75-616.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONERS' SUPPLEMENTAL BRIEF.

Introduction.

Since the filing of the reply brief for petitioners, certain subsequent decisions of this Court have been rendered which give further support to the petitioners' position in this cause. Therefore, pursuant to Rule 41 of the Supreme Court Rules, petitioners submit herewith their supplemental brief presenting late authorities.

I.

THE FAILURE TO GRANT THE REZONING REQUEST OF THE RESPONDENTS DID NOT VIOLATE THE CIVIL RIGHTS ACTS, THE FAIR HOUSING LAW, OR THE FOURTEENTH AMENDMENT.

The decision of the Court of Appeals in this case reversed the trial court, but in doing so generally sustained the findings of the trial judge. The District Court refused to find intentional racial discrimination on the part of the petitioners. The District Court had found that the claim of the denial of equal protection had not been proven, and the Court of Appeals declined to hold that that finding was clearly erroneous. 517 F. 2d 409, 412. The Court of Appeals also held that the District Court's finding that the petitioners were concerned with the integrity of the Village's zoning plan was not erroneous. 517 F. 2d 409, 412. The Court of Appeals further recognized that merely because a racial minority constituted a higher percentage of the lower and moderate income category, this disparity did not necessarily mean that the zoning change refusal had the type of racially discriminatory effect that required the invocation of the compelling interest test. The Court of Appeals conceded that the Village had not created the segregated housing pattern which that Court said existed in the entire Chicago area. 517 F. 2d 409, 414.

The trial court concluded that the weight of the evidence proved that the Village was motivated by a legitimate desire to protect property values and the integrity of the Village's zoning plan. The Court of Appeals did not challenge these findings, but held that the diminution of neighboring property values was a purely private monetary consideration, and in this instance was not a compelling interest. While recognizing that there was no discriminatory administration with respect to the Arlington Heights Zoning Ordinance, the Court of Appeals based its decision on a purported violation of the Fourteenth Amendment.

In the recent case of *Hills* v. *Gautreaux*, ... U. S. ....., 47 L. Ed. 2d 792 (April 20, 1976), the Court recognized that any effort to remedy admitted segregation in public housing by remedial court orders in a metropolitan-wide area must be subject to the police power of municipalities in which public housing was to be located. The Court pointed out that the use of the program to expand low income housing opportunities outside areas of minority concentration would not have a coercive effect on suburban municipalities. At 47 L. Ed. 2d 808, this Court said:

> "For under the program, the local governmental units retain the right to comment on specific assistance proposals, to reject certain proposals that are inconsistent with their approved housing assistance plans, and to require that zoning and other land use restrictions be adhered to by builders."

The Court went on to say:

> "The remedial decree would neither force suburban governments to submit public housing proposals to HUD nor displace the rights and powers accorded local government entities under federal or state housing statutes or existing land use laws."

Thus, it is clear that any court ordered efforts to cure the so-called segregated housing market found to exist in the Chicago metropolitan area must be subject to the zoning and land use restrictions of the communities where low and moderate income housing is to be placed. Where, as here, the Zoning Ordinance of the Village of Arlington Heights is admittedly a reasonable exercise of the legislative discretion vested in the corporate authorities of the Village, which was held invalid only because the Court of Appeals attempted to apply a compelling interest test in light of the metropolitan area situation, the doctrine of *Hills* v. *Gautreaux* requires that such a legitimate land use and zoning restriction should be sustained.

Also in point was this Court's recent decision in the case of *Washington* v. *Davis*, ... U. S. ....., 48 L. Ed. 2d 597

(June 7, 1976). In that case this Court repeated its previous holdings to the effect that the Fourteenth Amendment did not require striking down public acts in the absence of proof of discriminatory racial purpose merely because there was a substantial disproportionate racial impact. In that case the Court was concerned with a qualifying examination administered to prospective police officers. It was claimed that there had been a violation of the Fourteenth Amendment because a disproportionate number of Negroes were excluded. At 48 L. Ed. 2d 610, this Court said:

> "Both before and after Palmer v. Thompson, however, various Courts of Appeals have held in several contexts, including public employment, that the substantially disproportionate racial impact of a statute or official practice standing alone and without regard to discriminatory purpose, suffices to prove racial discrimination violating the Equal Protection Clause absent some justification going substantially beyond what would be necessary to validate most other legislative classifications.[12] The cases impressively demonstrate that there is another side to the issue; but, with all due respect, to the extent that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making out an equal protection violation, we are in disagreement".

In footnote 12 at page 610, the Court listed a number of lower court opinions which expressed the view that proof of discriminatory racial purpose was unnecessary. Among those cases specifically noted and which were specifically disapproved was the Court of Appeals' decision in the instant case.

We respectfully suggest that the recent decisions in *Hills* v. *Gautreaux* and *Washington* v. *Davis* are totally consistent with the previous decisions of this Court cited in petitioners' original and reply briefs. The unquestionable conclusion to be drawn from these decisions is that, in the absence of proof of purposeful racial discrimination, the mere fact a greater percentage of blacks might occupy Lincoln Green than other housing in

Arlington Heights was insufficient to invalidate the Zoning Ordinance of the Village as it affected the subject property. Both the trial court and the Court of Appeals in this case recognized that the Zoning Ordinance of the Village was based upon proper planning considerations and that the Village's efforts were undertaken to preserve the integrity of that ordinance. No racial motive nor discriminatory practice was proven—none existed.

As this Court has now made specific in *Hills*, the placing of low or moderate income housing in suburban communities is subject to existing valid zoning ordinances and other land use restrictions. The mere fact that low or moderate income housing is involved does not warrant the repudiation of otherwise valid police power ordinances. The fact that a disproportionate number of minority persons may be excluded does not make out an equal protection violation absent proof of discriminatory racial purpose.

Washington v. *Davis* also further lays to rest respondents' argument made from analogy to Title VII cases.

II.

THE RESPONDENTS FAILED TO OVERCOME THE PRESUMPTION OF VALIDITY ATTACHING TO THE ZONING ORDINANCE OF THE VILLAGE OF ARLINGTON HEIGHTS.

In our original brief we argued that the law was well established that a Zoning Ordinance is presumptively valid and the party assailing its validity must show by clear and convincing evidence that it is invalid. If there is any room for a reasonable difference of opinion, the Court will not substitute its judgment for that of the legislative body.

In the recent decision of *Eastlake* v. *Forest City Enterprises, Inc.*, ... U. S. ....., 49 L. Ed. 2d 132 (June 21, 1976), this Court was faced with an attack upon a charter provision of

the City of Eastlake which required a referendum to approve a zoning change. This Court again recognized the limits of constitutional protections as applied to property owners seeking to set aside a zoning restriction. In the *Eastlake* case, as in the instant case, there was no contention that the existing zoning classification rendered the respondents' property valueless or diminished its value below the value when the respondents acquired it. In the instant case, the subject property was to be purchased subject to rezoning for $300,000. The respondents' own witness conceded that the subject property was worth at least $375,000 under its existing single-family classification (R. 471). In a footnote at 49 L. Ed. 2d 138, this Court in the *Eastlake* case recognized that mere interference with a property owner's desires was insufficient to invalidate a zoning ordinance. The Court said:

> "8. [5b] By its nature, zoning "interferences" significantly with owners' uses of property. It is hornbook law that "[m]ere diminution of market value or interference with the property owner's personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or to entitle him to a variance or rezoning." 8 McQuillan, Municipal Corporations § 25.44, at 111. There is, of course, no contention in this case that the existing zoning classification renders respondent's property valueless or otherwise diminishes its value below the value when respondent acquired it."

At page 139 this Court commented on its landmark decision in *Euclid* v. *Ambler Realty Co.*, 272 U. S. 365, 71 L. Ed. 303, 47 S. Ct. 114 (1926). In that case the Court held that a property owner could challenge a zoning restriction if the measure was clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals or general welfare. But this Court went on to say in *Eastlake* at page 139, in language particularly appropriate to the case at bar:

> "But no challenge of the sort contemplated in Euclid v. Ambler is before us. The Ohio Supreme Court did not hold,

> and respondent does not argue, that the present zoning classification under Eastlake's comprehensive ordinance violates the principles established in Euclid v. Ambler. If respondent considers the referendum result itself to be unreasonable, the zoning restriction is open to challenge in state court, where the scope of the state remedy available to respondent would be determined as a matter of state law, as well as under Fourteenth Amendment standards. That being so, nothing more is required by the Constitution."

We suggest that the evidence in the trial court, as recognized by the Court of Appeals, was insufficient to overcome the presumption of validity attaching to the Zoning Ordinance. It was only by the erroneous use of the compelling interest test that the Court of Appeals was able to transform this garden variety zoning case into an equal protection cause. This Court's recent recognition in the *Eastlake* case that a mere interference with the owner's plans to develop his property is insufficient to invalidate a zoning ordinance clearly is applicable to the case at bar. The respondents failed to overcome the presumption of validity attaching to the Zoning Ordinance as it related to the subject property. The mere fact that a nondiscriminatory Zoning Ordinance, administered in a nondiscriminatory manner, might result in the exclusion of some low income people from an area zoned for single-family purposes does not elevate a conventional zoning controversy to the level of an attack on basic constitutional rights.

CONCLUSION.

We respectfully direct this Court's attention to its recent decisions in the *Hills, Washington* and *Eastlake* cases as further support for the arguments originally advanced by the petitioners in this case.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

FOR ARGUMENT

Supreme Court, U. S.
FILED
OCT 2 1976
MICHAEL RODAK, JR., CLERK

No. 75-616

In the Supreme Court of the United States

OCTOBER TERM, 1976.

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents.

RESPONDENTS' REPLY TO PETITIONERS' SUPPLEMENTAL BRIEF

F. WILLIS CARUSO
407 S. Dearborn Street
Chicago, Illinois 60605
(312) 341-9345

CAROL M. PETERSEN
233 S. Wacker Drive
Chicago, Illinois 60605
(312) 876-1000

ROBERT G. SCHWEMM
University Kentucky
College of Law
Lexington, Kentucky 40506
(606) 258-8998
Attorneys for Respondents and Intervening Respondents

Of Counsel:
SCHIFF, HARDIN & WAITE
Chicago, Illinois

October 4, 1976

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

In the
Supreme Court of the United States

OCTOBER TERM, 1976.

No. 75-616

VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,

Intervening Respondents.

RESPONDENTS' REPLY TO PETITIONERS' SUPPLEMENTAL BRIEF

Introduction

In its supplemental brief, Arlington Heights all but calls for repeal of the Supremacy Clause in exclusionary zoning matters based on its "analysis" of three cases re-

cently decided by this Court (*Hills* v. *Gautreaux,* ..... U.S. ....., 47 L.Ed.2d 792 (1976); *Washington* v. *Davis,* ..... U.S. ....., 48 L.Ed.2d 597 (1976); and *Eastlake* v. *Forest City Enterprises, Inc.,* ..... U.S. ....., 49 L.Ed.2d 132 (1976)). While important differences of opinion characterized the Court's rulings in each of these cases, the results reached are not challenged here. What respondents do vigorously dispute, however, is the suggestion that any of these decisions sanctions the efforts of a virtually all-white community to perpetuate the massive residential segregation of its growing area by blocking construction of 190 attractively designed townhouses of two stories or less by a private, non-profit developer that "might well result in increasing Arlington Heights' minority population by over one thousand percent." 517 F.2d 409, 414.

I.

WASHINGTON v. DAVIS: EQUAL PROTECTION

Washington v. *Davis, supra,* involved an equal protection challenge to a qualifying examination for prospective police officers based solely on the test's discriminatory impact in screening out black applicants. No claim of "intentional discrimination or purposeful discriminatory actions" was made. 48 L.Ed.2d 597, 604. In sustaining the validity of the test, the Court rejected the proposition that its disproportionate racial impact "standing alone and without regard to discriminatory purpose" would trigger the rule that official acts are subject to the strictest judicial scrutiny under the Equal Protection Clause when racial classifications are involved. *Id.,* at 609-610.

In the instant case the Court of Appeals held that "racial disparity alone as it relates to the housing project under

consideration does not amount to racial discrimination." 517 F.2d 409, 416. Thus the *Washington* injunction against an equal protection claim solely on the disproportionate impact of the challenged action is not violated.

The Court's opinion in *Washington* recognized that the necessary discriminatory purpose need not be express nor appear on the face of the statute and that a law's disproportionate impact is certainly a relevant factor, if not *the* relevant factor, in proving Constitution-based claims of racial discrimination. *Id.,* at 608. Indeed, since an official who intends to discriminate would rarely admit his real motive, the required invidious purpose generally would, of necessity, have to be "inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Id.,* at 608-609.

Nevertheless, the disproportionate impact of the police test in *Washington* did not "warrant the conclusion that it was a purposeful device to discriminate against Negroes," the Court held, because any inference that the Metropolitan Police Department purposefully discriminated on the basis of race was negated by the Department's evidence of its affirmative efforts to recruit black officers, of the changing racial composition of the recruit classes and of the force in general (44% of which were black), and of the proven relationship of the test to the police training program. *Id.,* at 611.

The Court of Appeals' decision here is consistent with both the reasoning and the result of *Washington* v. *Davis.**

---

* Petitioners misread the Court's opinion in *Washington* when they contend that inclusion of the decision below in its footnote 12 means that that decision has been "specifically disapproved." The Court carefully limited its disagreement with the "footnote 12

(Footnote continued)

The court began its analysis of petitioners' exclusion of Lincoln Green with the fact that their action would have a disproportionate impact on minority persons, but it specifically held that this fact *alone* did not establish an equal protection violation. 517 F.2d 409, 413. As the *Washington* opinion was to point out, the importance of this disproportionate impact in establishing a Constitution-based claim of racial discrimination could only be assessed against "the totality of the relevant facts" (48 L.Ed.2d 597, 608). The Court of Appeals went on to make such assessment by reviewing the context in which the decision to block the MHDC development had been made.

Among the totality of relevant facts that the record established were: (1) Arlington Heights had used its zoning and other powers to expand from a small village to one with a 1970 population of nearly 65,000 people, 99.9% of whom were white, making Arlington Heights the most residentially segregated large municipality in the greater

(Footnote continued)
decisions" only *"to the extent* that those cases rested on or expressed the view that proof of discriminatory racial purpose is unnecessary in making out an equal protection violation." *Id.*, at 610-611 (emphasis supplied). The record on which the Court of Appeals based its decision here contains substantial proof of Arlington Heights' discriminatory racial purpose in blocking Lincoln Green (discussed *infra*), despite the fact that the District Court, at petitioners' insistence, excluded evidence concerning their state of mind and motivation (see "Decision on Plaintiffs' Discovery Motion" (July 10, 1973) in the Court of Appeals Appendix (87-88); Tr. 161-163). The judgment of the Court of Appeals was, therefore, neither "disapproved" nor does it conflict with the *Washington* opinion.

Chicago area (516 F.2d 409, 413-414);* (2) Arlington Heights' spectacular *and highly segregated growth* patterns had been reflected in similarly dramatic statistics for the surrounding four-township area, which from 1960 to 1970 had also taken some 100,000 jobs from the City of Chicago (517 F.2d at 414); (3) Arlington Heights had continuously refused to permit, let alone support or encourage, any low and moderate income housing within its expanding borders, even though it had officially recognized the desperate and growing need for such housing that the massive population and job shifts had created (517 F.2d at 411, 414, 415; App. I 68); (4) Arlington Heights' refusal to permit construction of Lincoln Green meant that it was blocking the only opportunity to have any subsidized, integrated housing and thereby significantly to reduce residential segregation there (517 F.2d at 414, 415); and (5) Arlington Heights' rejection of Lincoln Green was with-

* It is statistically virtually impossible that these residential patterns could have developed in the Chicago area without purposeful racial discrimination. The record establishes that had Arlington Heights been an open community where the housing market was color-blind and was governed only by random choice, the number of blacks there now would be over 3,200, not 27 (Ps. Ex. 50 [50 WR-9]; Tr. 583). Nor should Arlington Heights be allowed to disclaim responsibility for the results of this discrimination, as the Court of Appeals noted when it held that Arlington Heights had exploited the problem of segregation in its area and never made any attempt to alleviate it. The dispute over Lincoln Green vividly demonstrates that the Arlington Heights officials know in advance whether a proposed development is to be integrated and can and do use their zoning powers to reject proposals simply on the basis of community racial hostility (see Ps. Ex. 42, p. 6).

out substantial justification (517 F.2d at 415.)* Since Arlington Heights' decision to block Lincoln Green was thus clearly established as an effort to perpetuate, encourage, and continue to exploit racial segregation and since that action was not adequately explained on nonracial grounds (see *Washington* v. *Davis,* 48 L.Ed.2d 597, 608-609), the Court of Appeals properly held that it involved the kind of invidious racial discrimination condemned by the Equal Protection Clause.**

---

* All of the professional evidence presented to petitioners during zoning hearings before the Plan Commission and the Trustees supported the propriety of the Lincoln Green townhouses at the Viatorian location. In contrast, petitioners never received or even asked for the opinion of their own professional planner on the development. (App. I 68; Tr. 114-115). Rather, as the Village President stated, they rejected the MHDC proposal in response to the unprecedented community opposition that it provoked (Ps. Ex. 42, p. 6), which was based in substantial part on the race of the proposed residents (see Respondents' Brief 16-19). At trial, petitioners came up with two zoning claims to rationalize their decision: (1) the "integrity" of their buffer policy regarding multiple family developments, which had not been applied with any consistency in the past and which "has only minimum applicability to this type of low-rise, open space development" (517 F.2d at 415); and (2) neighbors' fears that the value of their homes might be diminished by their proximity to an integrated, subsidized development. The Court of Appeals' analysis and rejection of these insubstantial defenses was correct, regardless of what standard of judicial scrutiny might be appropriate.

**As Mr. Justice Harlan wrote in commenting on the Equal Protection Clause in *Adickes* v. *S. H. Kress & Co.,* 398 U.S. 144, 150-152 (1970): "Few principles of law are more firmly stitched into our constitutional fabric than the proposition that a State must not discriminate against a person because of his race or the race of his companions, or in any way act to compel or encourage racial segregation."

Even though this court's opinion in *Washington* makes clear that direct proof of official racial motivation is not required, respondents have nevertheless always contended that petitioners' decision was indeed racially motivated (see 373 F. Supp. 208, 210; compare *Washington* v. *Davis,* 48 L. Ed.2d 597, 604), and the record amply supports this contention (see Respondents' Brief 16-19; 24-25). There is, indeed, no small irony in the claim in petitioners' supplemental brief that "[n]o racial motive was proven" (p. 5), because it was petitioners, themselves, who successfully urged the district court [on the strength of *Palmer* v. *Thompson,* 403 U.S. 217 (1971) and *U.S.* v. *O'Brien,* 391 U.S. 367 (1968)] to prohibit any inquiry into their state of mind or motivation when they rejected Lincoln Green.*

Nevertheless, the circumstantial evidence of petitioners' illicit motivation is substantial. For example, petitioners' review of Lincoln Green was clearly not directed toward the merits of the proposal because all of the professional evidence that was produced favored it, all of the suggestions of the Arlington Heights' staff and Plan Commission were incorporated into the Lincoln Green plans, and petitioners never received nor even asked for the professional opinion of their own zoning and planning expert regarding the proposal (App. I 68; Tr. 114-115). What petitioners *did* respond to was the overwhelming, hostile, unprecedented reaction of the community against Lincoln Green, which often involved racially explicit statements and which, the

---

* See the District Court's "Decision on Plaintiffs' Discovery Motions" (July 10, 1973) in the Court of Appeals Appendix (87-88); Tr. 161-163. It is perhaps not insignificant that petitioners fought so hard to keep this evidence out of the record, and respondents argued such evidence is a proper subject for inquiry and is admissible.

Village President stated, was "a mandate to reject this proposal." (See Respondents' Brief 17-19; Ps. Ex. 42, p. 6).*

The contrast with the petitioners' behavior in *Washington* v. *Davis* is striking. While 44% of the new police officers recruited by the *Washington* petitioners in recent years were black (the same percentages as 20 to 29 year old blacks in the recruiting area), the spectacular growth of Arlington Heights has been limited to whites, even though the number and percentage of blacks in the overall Chicago area have risen substantially during the period 1960 to 1970 (Tr. 554-555). While the *Washington* petitioners "systematically and affirmatively sought to enroll black officers" (48 L.Ed.2d 597, 605), Arlington Heights has refused to accept any responsibility for dealing with its totally segregated housing patterns and indeed has even blocked all private efforts, such as MHDC's, to alleviate this problem. And while the *Washington* defendants estab-

* Neither of the courts below dealt directly with this evidence. The District Court, having ruled during discovery and at trial that direct inquiry into petitioners' motivation was impermissible under *Palmer* v. *Thompson*, 403 U.S. 217 (1971), noted that "motives are irrelevant if the effect is illegal." 373 F. Supp. 208, 210. The Court of Appeals adopted a similar view, assessing the discriminatory aspects of petitioners' actions "[r]egardless of the Village Board's motivation." 517 F. 2d 409, 413. Of course, an official's racial motivation may not be equivalent to the "racially discriminatory purpose" reflected in his official act, as that phrase is used in *Washington* v. *Davis*. The lower courts' language, therefore, does not necessarily conflict with *Washington*. *Washington's* discriminatory purpose rationale was not discussed *per se* in their opinions. Nevertheless, the Court of Appeals' requirement that more than disproportionate impact be shown, its assessment of that impact in terms of the totality of relevant facts, and its review of petitioners' claimed justifications, taken together, indicate that its approach and result are consistent with *Washington*.

lished that performance on their Test 21 was related to performance in their training program, neither of Arlington Heights' belatedly conceived zoning rationales for the rejection of Lincoln Green can be said to advance any legitimate municipal purpose. Petitioners utterly disregard the established record of their own discriminatory behavior when they ask this court to extend *Washington* v. *Davis* to sanction their rejection of Lincoln Green, an extention that would render the constitutional guarantee against official racial segregation all but useless except in the most blatant, unsophisticated cases of discrimination.

Whether or not the Court of Appeals might properly have buttressed its determination that petitioners violated the Equal Protection Clause with the evidence of their illicit motivation, its opinion clearly reflects the belief that their discrimination was purposeful. Its analysis of the history and context of Arlington Heights' rejection of Lincoln Green and of the claimed justifications for that decision convinced the court below that petitioners' action would perpetuate the massive residential segregation that Arlington Heights' land use policies had fostered. The opinion's comment that "[w]e have no doubt that if Lincoln Green were built, it, unlike the rest of the Village, would be an integrated community" (517 F.2d 409, 414) reflects the conviction that the exclusion of blacks from Arlington Heights has not been (as it could not have been) the result of racially neutral decisions. And the court's conclusion that Arlington Heights has been "exploiting," not merely ignoring, its segregated housing patterns (*id.*) is a determination of purposeful discrimination.

The record in *Washington* v. *Davis* did not establish purposeful racial discrimination. It does here. Without suggesting that the Court of Appeals anticipated the

Washington opinion, respondents do submit that its decision is based on a proper analysis under *Washington* of all of the relevant facts and that it is correct, because it applies the Equal Protection Clause to prevent official conduct that reflects a racially discriminatory purpose (see *Washington* v. *Davis,* 48 L.Ed.2d 597, 607).

II.

WASHINGTON v. DAVIS: TITLE VIII

Another important element of the *Washington* opinion is its distinction between what may be required to establish an equal protection violation on the one hand and what may be required under a Congressional act prohibiting discrimination on the other. 48 L.Ed.2d 597, 611. While purposeful racial discrimination is necessary to sustain a Constitution-based claim, Congress had provided that discriminatory purpose need not be proved in a proper case to establish a violation of Title VII. *Id.* When employment practices that disproportionately disqualify large numbers of blacks are challenged under Title VII, the *Washington* opinion noted, "it is an insufficient response to demonstrate some rational basis for the challenged practices. . . . However this process proceeds, it involves a more probing judicial review of, and less deference to, the seemingly reasonable acts of administrators and executives than is appropriate under the Constitution. . . ." *Id.,* at 611-612.

Thus *Washington* indicates that the appropriate standard of judicial review in a case alleging official racial discrimination may well be more probing if the claim is based on a specific Congressional prohibition of discrimination than if it is based solely on the Constitution. Since the day their complaint was filed, respondents have consistently

contended that Arlington Heights' rejection of Lincoln Green violated the federal fair housing laws [Title VIII of the Civil Rights Act of 1968, (The Fair Housing Act, 42 U.S.C. §§ 3601 *et seq.*) and the Civil Rights Act of 1866 (42 U.S.C. § 1982)] as well as the Equal Protection Clause. Although the Court of Appeals did not explicitly consider the statutory challenge, its analysis of the overall racial impact of and the insubstantial rationalizations for petitioners' rejection of Lincoln Green and its conclusion that Arlington Heights' action caused an unjustifiable perpetuation of residential segregation are more than sufficient to establish a violation of Title VIII (see Respondents' Brief 38-49).*

Congress has determined in Title VIII that "[i]t is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States" (42 U.S.C. § 3601). To that end, it has proscribed, in the broadest language possible, all practices—public or private—that make housing unavailable to any person because of race or that interfere with the provision of such nondiscriminatory housing (42 U.S.C. § 3604(a) and § 3617) in an effort to achieve the vital national policy of replacing "the ghettos by truly integrated and balanced living patterns." *Trafficante* v. *Metropolitan Life Insurance Co.,* 409 U.S. 205, 211 (1972). Since Arlington Heights'

---

* Indeed, in determining that petitioners' action involved illegal segregation, the court below relied on a number of decisions that were based on the federal fair housing laws (507 F.2d at 413-415). See, *e.g., United States* v. *City of Black Jack, Missouri,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975), where a zoning ordinance that prevented construction of a subsidized, integrated development such as Lincoln Green in an all white area was held to violate Title VIII because of its racially discriminatory effects.

refusal to permit construction of Lincoln Green excludes large numbers of blacks from a highly segregated white area rich in jobs and since the claimed justifications for that refusal are insubstantial at best, petitioners have violated Title VIII regardless of whether the court below found the kind of invidious purpose necessary to an equal protection challenge. *Cf. Washington* v. *Davis,* 48 L.Ed.2d 597, 611.

III.
HILLS v. GAUTREAUX

It is hard to imagine how petitioners could take any solace from this Court's decision in *Hills* v. *Gautreaux,* which held that HUD's violation of the Fifth Amendment and the 1964 Civil Rights Act by helping to create Chicago's racially segregated public housing program permitted a federal court to fashion a remedial order extending beyond Chicago's borders. The facts here show a use of local governmental powers in violation of Federal constitutional and statutory rights to prevent construction of an integrated development. The portions of the *Hills* decision quoted by the petitioners in their supplemental brief speak merely of those municipalities which have not yet so misused their powers and such quotes are irrelevant here.

It was understood in *Hills* that the entire Chicago metropolitan area "is a single relevant locality for low rent housing purposes" (47 L.Ed.2d 792, 800) and that a "city-only" remedy would not succeed in alleviating the effects of HUD's past segregative practices, because it would not result in housing being developed in desegregated neighborhoods. *Id.,* at 800, 803. Nevertheless, HUD raised two objections to metropolitan area relief on the basis of *Milliken* v. *Bradley,* 418 U.S. 717 (1974), both of which were rejected by the Court.

First of all, as Justice Stewart's opinion pointed out "[t]he critical distinction between HUD and the suburban school districts in *Milliken* is that HUD has been found to have violated the Constitution." 47 L.Ed.2d 792, 803. That is an important factor here as well. Arlington Heights, like HUD, has violated constitutional and statutory prohibitions against racial discrimination. Unlike HUD, however, Arlington Heights' violation creates no special problems with respect to the appropriate remedial order. No affirmative duty of any kind is sought to be imposed on Arlington Heights as a result of its segregative action. All that respondents have ever asked is that petitioners stop their illegal interference with MHDC's private efforts to begin to ease the problems created by the overwhelmingly segregated housing patterns that have been developed in Arlington Heights. A simple injunction, requiring neither planning nor expenditures by petitioners, will suffice.

The *Hills* opinion then went on to demonstrate that a remedial order against HUD affecting its conduct beyond Chicago's boundaries would not impermissibly interfere with suburban authorities that had not been implicated in any unlawful conduct. *Id.,* at 805. This was so, the Court noted, because local governments have a role to play in many federal housing assistance programs, including the important § 8 Lower-Income Housing Assistance program of the 1974 Housing and Community Development Act (42 U.S.C. §§ 1437 *et seq.*), and HUD's efforts to expand low-income housing opportunities outside areas of minority concentration would thus not necessarily have a coercive effect on suburban municipalities. *Id.,* at 805-808.

Incredibly, petitioners read this part of the *Hills* opinion as establishing a kind of "reverse-Supremacy Clause,"

under which local zoning restrictions can be exercised at the discretion of municipal officials to frustrate Congressional acts designed to provide for integrated and balanced living patterns (Title VIII) and to promote greater choice of housing opportunities for assisted persons outside of areas of minority concentration (Housing and Community Development Act of 1974; see 47 L.Ed.2d 792, 806-807). Nothing could be further from the intent of *Hills*. While indicating a concern for the legitimate interests of suburbs not found to have violated any law (a protected status that Arlington Heights cannot claim here), the *Hills* opinion pointed out that the approval of even these municipalities is not required as a condition of § 8's applicability to a locality (*id.*, at 807) and that while municipal interests are to be considered by HUD, they cannot block Congress' goal in § 8 of providing for expanded low-income housing opportunities distributed throughout a metropolitan housing market. *Id.*, at 807-808.

Petitioners not only misconstrue the *Hills* opinion, their position would have the ultimate effect of nullifying *Hills*. If Arlington Heights, which has used its zoning and other land use powers to grow into the most residentially segregated large municipality in the Chicago metropolitan area, can block all private efforts to provide subsidized, integrated housing in the Village on the basis of the insubstantial excuses offered here, then every Chicago suburb would be justified in totally excluding such housing, and neither HUD nor the District Court on remand from *Hills* could even consider a metropolitan area remedy. Nor, for that matter, could HUD use the § 8 program to achieve the Congressional purpose of expanding low-income housing opportunities outside areas of minority concentration in any metropolitan housing market in the country. In order for the national housing policy of balanced, dispersed

federally assisted housing to succeed, local authorities such as petitioners must at least have the obligation to refrain from frustrating private efforts to carry out that policy. *United Farm Workers of Florida Housing Project, Inc.* v. *City of Delray Beach, Florida,* 493 F.2d 799, 811 (5th Cir. 1974).

IV.

EASTLAKE v. FOREST CITY ENTERPRISES, INC.

In *Eastlake,* the Court rejected a commercial developer's challenge on procedural due process grounds to a local charter provision that required a referendum to approve a zoning change. Since Arlington Heights does not use a referendum in establishing its zoning classifications and since it is the substance of what petitioners have done, not the procedures which they used, that is attacked here as violative of respondents' equal protection and fair housing rights, *Eastlake* is not in point.

Indeed, the Court in *Eastlake* specifically distinguished that case from a challenge to the merits of the particular zoning classification involved (49 L.Ed.2d 132, 139), which in a commercial case traditionally presents the due process issue in terms of whether the zoning restriction bears a substantial relation to the public health, safety, or general welfare. *E.g., Euclid* v. *Ambler Realty Co.,* 272 U.S. 365 (1926); *Nectow* v. *Cambridge,* 277 U.S. 183 (1928). Arlington Heights' exclusion of Lincoln Green, of course, raises more important issues than the mere diminution in the market value of MHDC's property although, as a matter of fact, respondents have consistently maintained that Arlington Heights' action cannot be justified even under traditional zoning principles that are appropriate for com-

mercial cases where racial segregation is not involved (see 517 F.2d at 412 and 415; Respondents' Brief 3, 6-12, 33-38).*

Wholly apart from racial considerations, Arlington Heights' prevention of the construction of Lincoln Green on the proposed site would in no way advance the public health, safety, or general welfare. Except for the high school and novitiate, the 80 acre Viatorian property has long been vacant, and most of it will remain open space after Lincoln Green is built. The townhouses are carefully planned to harmonize with the desirable features of the landscape and the neighboring single family homes (517 F.2d at 415; Ps. Ex. 5, 11, 51). The MHDC development would make a net contribution to the finances of Arlington Heights and its schools and would have only a minor impact on traffic in the area (see Respondents' Brief 9). There is an overwhelming need for the kind of housing that Lincoln Green would provide, a need much greater than that for any commercial housing that could be proposed for the site (*id.* 10-12; 517 F.2d at 411).

The other side of the coin is that petitioners' two claimed justifications for rejecting the MHDC proposal are not rationally related to any legitimate municipal interest. First they argue that it is their policy to permit multiple family developments only as "buffers" between single family and commercial or institutional uses. Apart from

* Petitioners' repeated claim that their overall "Zoning Ordinance" (whose importance, if not legality, they would magnify by the constant use of capital letters) is "admittedly" reasonable is, at this late stage of the litigation, particularly galling. No one has ever admitted any such thing. As a matter of fact, the record demonstrates that Arlington Heights' residential zoning scheme classifies vacant land, like the Viatorian property, as single-family merely as a holding device that is changed regularly for private projects, but is available to frustrate developers like MHDC who are not acceptable to Arlington Heights (see, *e.g.*, Ps. Exs. 12, 33, 52).

the fact that petitioners have not consistently applied this policy and that it has limited applicability to the townhouses proposed by MHDC (517 F.2d at 415), Lincoln Green would in fact comply with this policy, since it will be located between the single family homes to the south and east and the novitiate and high school on the Viatorian property to the north and west. Nor does the alleged diminution in neighboring property values justify petitioners' action. To the extent that this claim is based on the neighbors' "reliance" on the 1959 comprehensive plan, it is without substance both because their homes were built *before* the plan was developed and because Arlington Heights has permitted commercial multiple family developments next to every high school except St. Viator's and has made dozens of amendments to its zoning plan for construction of such developments adjacent to single family homes (see Ps. Ex. 12, 33, 52). And to the extent that this claim reflects the neighbors' displeasure in living near an integrated, subsidized development, it is entitled to no weight whatsoever.

In sum, construction of Lincoln Green would advance the general welfare, while Arlington Heights' rejection of the development is not justified by any legitimate governmental interest under the *Euclid* analysis.

Conclusion

Under these recent decisions of this Court, as well as under prior law, the decision of the Court of Appeals is correct, and it should be affirmed.

Respectfully submitted,

F. Willis Caruso
Robert G. Schemm
Carol M. Petersen
Attorneys for Respondents and Intervening Respondents

Supreme Court, U. S.
FILED
APR 7 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

TABLE OF CONTENTS.

AUTHORITIES CITED.

Cases. PAGE

Acevedo v. Nassau County, 500 F. 2d 1078 (2d Cir. 1974) (distinguished) 37

Banks v. Perk, 473 F. 2d 910 (6th Cir. 1974) (distinguished) 22

Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961) (distinguished) 24

Citizens Committee for Faraday Wood v. Lindsay, 362 F. Supp. 651 (S. D. N. Y. 1973), aff'd 507 F. 2d 1065 (2d Cir. 1974), cert. denied 421 U. S. 948 (1975) . . 24, 29

Clark v. Universal Builders, 501 F. 2d 324 (7th Cir. 1974) (distinguished) 37

Confederacion de La Raza Unida v. City of Morgan Hill, 324 F. Supp. 895 (N. D. Calif. 1971) 31

Construction Industry Association of Sonoma County v. City of Petaluma, No. 74-2100 (9th Cir. August 13, 1975) 29, 30

Cornelius v. Parma, 374 F. Supp. 730 (N. D. Ohio 1974), aff'd 521 F. 2d 1401, cert. denied 3/8/76, 44 L. W. 3501 ..... 32, 42

Cosmopolitan National Bank v. Mount Prospect, 22 Ill. 2d 463, 468-69 (1961) 9

Crow v. Brown, 332 F. Supp. 382 (N. D. Ga. 1971), aff'd 457 F. 2d 788 (5th Cir. 1972) (distinguished) . . 28

Dailey v. City of Lawton, 452 F. 2d 1037 (10th Cir. 1970) (distinguished) 16, 21, 25, 26

DeFunis v. Odegaard, 416 U. S. 312 (1974), 40 L. ed. 2d 164 (dissenting op.) 40

Detroit United Railway v. Detroit, 255 U. S. 171 (1920), 65 L. ed. 2d 570 20

Glassey v. County of Tazewell, 11 Ill. App. 3d 1087, 297 N. E. 2d 235 (1973) (distinguished) 32

Griggs v. Duke Power Co., 401 U. S. 424 (1971) (distinguished) 39

Hawkins v. Town of Shaw, 461 F. 2d 1171 (5th Cir. 1972) (distinguished) 22

Hing v. Crowley, 113 U. S. 708 (1884), 28 L. ed. 1145.. 20

James v. Valtierra, 402 U. S. 137 (1971), 28 L. ed. 2d 678 25

Kennedy Park Homes Association v. City of Lackawanna, 318 F. Supp. 669 (W. D. N. Y. 1970) (distinguished) 16, 22, 27, 28, 38, 47

Kirkland v. Dept. of Correctional Services (U. S. D. C., S. D. N. Y., August 6, 1975), 11 FEP Cases 36 40

Lakeland Bluff, Inc. v. County of Will, 114 Ill. App. 2d 267, 252 N. E. 2d 765 (1969) (distinguished) 32

Lawrence v. Oakes, 361 F. Supp. 432 (D. Vt. 1973).... 24

Lindsey v. Normet, 405 U. S. 56 (1972), 31 L. ed. 2d 36 .....24, 28, 29

Locker v. City of McHenry, 89 Ill. App. 2d 457 (1967).. 32

McDonnell Douglas Corp. v. Green, 411 U. S. 792, 93 S. Ct. 1817 (1973) (distinguished) 39

Metropolitan Housing Development Corporation v. Arlington Heights, 517 F. 2d 409 (7th Cir. 1975).....20, 22, 30

Metropolitan Housing Development Corporation v. Arlington Heights, 373 F. Supp. 208 (N. D. Ill. 1974)..... ..... 2, 6, 20, 22, 24, 34

Milliken v. Bradley, 418 U. S. 717 (1974), 41 L. ed. 2d 1069 .....26, 30, 45, 46

Palmer v. Thompson, 403 U. S. 217 (1971), 20 L. ed. 2d 438 .....20, 46

Ranjel v. City of Lansing, 417 F. 2d 321 (6th Cir. 1969) 15

San Antonio Independent School District v. Rodriguez, 411 U. S. 1 (1973), 36 L. ed. 2d 16 .....24, 28, 29

Seith v. City of Wheaton, 89 Ill. App. 2d 446 (1967).... 33

Sisters of Providence v. City of Evanston, 335 F. Supp. 396 (N. D. Ill. 1971) (distinguished) 38, 46

Skillken & Co. v. City of Toledo, et al., Nos. 74-2116 and 74-2320 (6th Cir. December 10, 1975) 24, 29, 31

Stalzer v. Village of Matteson, 14 Ill. App. 3d 891, 303 N. E. 2d 489 (1973) (distinguished) 33

Trafficante v. Metropolitan Life Insurance Company, 409 U. S. 205 (1972) (distinguished) 35, 37, 43

United Farmworkers v. City of Delray, 493 F. 2d 799 (5th Cir. 1974) (distinguished) 22, 28, 38

United States v. City of Black Jack, 508 F. 2d 1179 (8th Cir. 1974) (distinguished) 4, 16, 22, 27, 35, 36, 38, 47

United States v. O'Brien, 391 U. S. 367 (1968), 20 L. ed. 2d 672 20

Village of Belle Terre v. Boraas, 416 U. S. 1 (1974), 39 L. ed. 2d 797 .....24, 29, 45

Warth v. Seldin, 422 U. S. 490 (1975), 45 L. ed. 2d 343 .....32, 41, 43

Wright v. City of Emporia, 407 U. S. 451 (1972) (distinguished) 24

Ybarra v. City of Town of Los Altos, 503 F. 2d 250 (9th Cir. 1974) 30, 31

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

The respondents herein have offered a purported statement of the case which is not only inaccurate and misleading, but which in effect seeks to argue the merits. Although it is difficult to separate the argument from the facts as set forth in the respondents' brief, it is necessary to correct some of the more glaring errors.

The respondents accuse the petitioners of a series of misstatements and exaggerations, without bothering to indicate a single

example. They assert that the Village's zoning has no integrity and has not been consistently applied. In citing the Court of Appeals' opinion, they even misstate the opinion which is the subject matter of this proceeding. The Court of Appeals at page 412 points out "that the evidence does not necessitate a finding that Arlington Heights administered this policy in a discriminatory manner." At page 415 the Court of Appeals does not question the integrity of the zoning, but simply incorrectly applied the "compelling interest" test and determined that the zoning ordinance failed to meet this test. The trial court specifically found that the defendants were motivated with respect to the property in question by a legitimate desire to protect property values and the integrity of the Village's zoning plan. 373 F. Supp. 208, 211. This finding was not disturbed by the Court of Appeals' opinion.

The Village is being asked to "plan for" multiple-family development on the subject property by changing the long-established single-family classification which is totally consistent with surrounding land uses and zoning. There is absolutely no evidence in the record of any exploitation of local segregated housing patterns by the petitioners. Instead, the evidence indicates clearly that the Village zoning ordinance has permitted the development and planning of thousands of multiple-family dwellings, as well as single-family dwellings in appropriate places throughout the Village. The Village's housing pattern, which has been established by the market, still encompasses almost 200 poverty families (Rec. 481) and the respondents' own evidence indicates that, based on 1970 census data, more than 3,000 blacks could afford to live in the Village and 473 black households could rent housing in the Village based on economic data revealed by the census. These figures did not even take into account possible movements from existing single-family homes outside the Village to apartments in the Village, or movements from apartments outside the Village to single-family homes in the Village. The respondents' own evidence also showed that

2,500 blacks who would be eligible for Lincoln Green housing would also be eligible for other housing in the Village. (Tr. 595) The evidence also indicates that this selfsame Village Board approved a report that recommended the development of 150 to 250 units of moderate-income housing and 50 units of low-income housing in the Village. (App. I, 68)

The respondents also do not mention that the Answers to Interrogatories filed by the petitioners in this case also reveal that the Village has entered into a cooperation agreement with the Housing Authority of Cook County to provide low-income housing for the elderly, and that in fact such housing has been approved and is about to commence construction in the Village. (Answers to Interrogatories, No. 36) The trial court refused to admit into evidence the Village's Fair Housing Ordinance adopted in January of 1968 on grounds of relevancy, but the response to interrogatories also indicates the adoption of such ordinance. (Answers to Interrogatories, No. 40)

In fact, the minutes of the Plan Commission received over objection of the Village indicate that the motion made with respect to the application of the respondents was that it "be denied, as it is a request for spot zoning. While the need for low and moderate income housing may exist in Arlington Heights or its environs, the Plan Commission would be derelict in recommending it at the proposed location." (Plf. Ex. 17)

These unquestioned facts, well known to the respondents, hardly justify the intemperate characterizations directed against the Village. In fact there is no evidence in the record that the action of the municipality in any way has racially discriminatory effects. The most that the respondents have been able to demonstrate is that, based on census figures blacks represent 40% of the eligible applicants for housing which was proposed to be built. The respondents were unable to produce a single black citizen whose income fell within the range or who could be proven to be an occupant of the housing once built. There was

no evidence in the record with respect to the two blacks who originally were plaintiffs, but who actually lack standing, which indicated either that they were eligible for the Lincoln Green project or that they would in fact reside in the project.

Even if it be assumed that a racially discriminatory effect would warrant setting aside the otherwise valid and long-standing single-family zoning on the subject property, which contention we strenuously deny, it is clear that the respondents have fallen far short of showing any racially discriminatory effect of the action complained of here. It comes with little grace to argue on the one hand that blacks would represent 40% of the eligible applicants for 190 units and therefore the Village's action was discriminatory, while it is the respondents' own evidence that some 2,500 of the blacks who would be eligible for Lincoln Green housing are also eligible for other existing housing in the Village—such housing actually built under the existing zoning ordinance.

There is no question that the zoning ordinance has been amended many times to permit multiple-family developments. There is no evidence that all of these or any of them were "high rent apartments." The evidence is clear, as recognized by both the trial court and the Court of Appeals, that the Village has generally adhered to its apartment policy with respect to zoning changes. If the Village had not made zoning changes in order to accommodate multiple-family construction where such construction met proper planning criteria, undoubtedly these respondents would be complaining that the Village was practicing exclusionary zoning by refusing to allow development of multiple-family dwellings within its corporate limits. *Cf., United States* v. *City of Blackjack*, 508 F. 2d 1179 (8th Cir. 1974).

Totally ignored by the respondents is the fact that the Village on at least 39 occasions rejected applications for multiple-family zoning which, like the application in the instant case, did not meet planning criteria for such rezoning. The most that can be said for the respondents' position is that if the Village had been

willing to ignore all basic zoning criteria and spot zone the subject property, at the expense of the neighbors and the destruction of the Village's plan, possibly 190 low and moderate income families could occupy the site. There is no evidence that any of these families would be black, nor is there any evidence that any of these families would be white. The Village's decision was in fact "colorblind" and the unwarranted and totally unsupported assertions of the respondents of racial bias simply do not find any support in the record or in fact.

Background of MHDC.

The respondent MHDC in its brief indicates that it has developed scores of apartments and houses made available to minorities under federal subsidy programs. This statement hardly squares with the evidence in the record. Mr. Kane, Director of Real Estate, testified that they had constructed 37 single-family homes in South Elgin and had rented three or four others. (Tr. 56) The only application ever made for rezoning in the northwest suburban community was the subject property. (Tr. 74)

The respondents do not inform this Court that the only multiple-family development which MHDC had ever constructed was the 212-unit development known as Rand Grove Village located in Palatine Township and mentioned in the respondents' brief. What the respondents do not tell this Court is that Rand Grove is three quarters of a mile from the corporate limits of Arlington Heights. It is located on property properly zoned and was developed without objection or interference of any kind on the part of the Village of Arlington Heights or any of the other surrounding communities.

This hardly qualifies MHDC as a substantial force in the housing market or the northwest suburban community area of which Arlington Heights is a part, as a provider of low and moderate income housing.

While the respondents indicate the benefits of the 236 program and discuss the income limitations, they do not tell the

Court that at the time of trial, some two years after their application was denied at the local level, the respondents had never applied for a 236 commitment. (Tr. 273) The trial court found in fact that federal funding for the project was not available. 373 F. Supp. 208, 211.

In describing the proposed plan for Lincoln Green having a density of 13 units to the acre, the respondents do not mention the fact that this density is more than three times the R-3 density which applies to all the surrounding single-family area. To assert that a multiple-family development of 13 units to the acre is similar to neighboring houses in all material, physical respects is blatantly misleading.

Totally ignored is the testimony of Rolf C. Campbell, a zoning and planning consultant, who testified for the Village that the proposed development would be adverse to adjacent property owners and would adversely affect the livability of the single-family residences. (Tr. 876) Campbell's opinion of adverse effect was based upon the plan that the respondents had submitted to the Village, which was in evidence. His opinion with respect to the effect on the surrounding areas had nothing to do with the character of the persons who would be residing in the development. (Tr. 882) Campbell testified that ground coverage for single-family homes is almost always a higher percentage than ground coverage in multiple developments. (Tr. 884) He testified as to his work as a consultant on several amendments to the Comprehensive Plan first adopted in 1959. His work took place in 1961, 1962 through 1966, 1967 and 1968. He testified that the decision of the Village in rejecting the Lincoln Green proposal was consistent with the recommendations of the Comprehensive Plan. (Tr. 888)

Also ignored was the testimony of the Village Planner, Joseph Kesler, that the actual density of the land utilized for residential purposes in the proposed plan was 15 units to the acre. (Tr. 783) Kesler was of the opinion that the proposed development would have a detrimental effect on the surrounding area from a

planning standpoint. (Tr. 788) He testified that at the time of the application, traffic conditions along Euclid Avenue were hazardous and the number of trips per day to be generated by the project would be higher than if the land was used for single-family purposes. (Tr. 793) In Kesler's opinion, the highest and best use of the subject property was for single-family homes in view of the character of the surrounding area. (Tr. 805)

Also ignored in the respondents' description of the Lincoln Green plan and its impact on the neighborhood was the testimony of F. Gregory Opelka, a professional real estate appraiser and Vice-President of Fairfield Savings & Loan Association. He testified that the subject property adjoins the rear yards of single-family homes that run from Euclid to Oakton. These homes range in value from $50,000 to $70,000. The majority were built in the last 10 years; some are newer. (Tr. 914) Across from the high school on Oakton, the homes were built in the last few years and some new homes are under construction. (Tr. 915) West of the subject property are homes, many of which were developed in the 1940's and 1950's. To the south are single-family homes in the $30,000 to $40,000 range, built in the late 1940's and 1950's. On Euclid Avenue across the street from the subject property are homes, some of which were built in the last 5 to 10 years. (Tr. 916)

Opelka testified that the proposed development will diminish the value of the properties in the immediate area and in other parts of the Village. (Tr. 931) This range in negative effect on the single-family homes would be between 5% and 10% of their value, with the most severe effect on the properties adjoining the subject property on the east. (Tr. 931) He testified that this was a completely developed area, except for the high school property, and that people who buy in a completely R-3 area have a right to rely on the land use and zoning. (Tr. 932) People have a right to rely on the plans of municipalities for this type of protection. Opelka testified that his opinion would be the same if the property were developed as proposed with

totally private financing, and no matter what price range or rental range the R-5 development would have. (Tr. 935)

Mr. Drummond's alleged "expertise" can best be measured by the fact that he had had no experience with a 236 project that had been actually built and had done no previous planning studies in Arlington Heights. He conceded that the whole area in which the subject property lies has been developed in accordance with the official plan of 1959, and that the proximity of Euclid Avenue does not inhibit the development of single-family homes on the subject property. (Tr. 423) Drummond also testified that practically all the way from the eastern boundary of Arlington Heights to Northwest Highway on the west, Euclid Avenue is developed with single-family homes and this is the predominant land use on both sides of Euclid. (Tr. 424) He saw nothing different about the subject property from the land which had been developed for single-family use along Euclid Avenue.

Drummond also testified that he had no knowledge of what was economically feasible in Arlington Heights in 1971, and had had no experience with single-family home development in a builtup community such as Arlington Heights. (Tr. 433) He testified that R-5 Districts are used as buffers in Arlington Heights between single-family areas and manufacturing and commercial uses. (Tr. 439) In his opinion it was not unusual to plan along those lines. (Tr. 441)

Drummond conceded that there would be more automobiles in the morning rush hour from the proposed project than if the land were developed for single-family purposes. When he characterized the proposed development as comparable to single family, he meant only that a developer who was formerly serving that portion of the single-family market was now offering townhouses or condominiums. (Tr. 451) He concluded that the site was just as desirable for single-family use as for the proposed development. (Tr. 456)

Thus, the characterization in the respondents' brief of Drummond's testimony is highly inaccurate since he conceded that single-family homes were equally well suited for the subject property, and his definition of compatibility had nothing to do with the use of the land, but rather the character of the builders in the market.

Reference is made to a purported tax impact study. This study supposedly shows that the development would make a net contribution to the Village and to the Arlington Heights schools in terms of tax revenue. The law of course is clear that municipalities are not required to formulate zoning requirements based upon discouraging families with children or with reference to the revenues to be derived by the school district. *Cosmopolitan National Bank* v. *Mount Prospect*, 22 Ill. 2d 463, 468-69 (1961). Moreover, the tax study was produced based on figures prepared by a John Ducey who did not testify in the case.

The validity of the tax impact study may be gauged by the fact that Ferrara, who had supposedly modified Ducey's figures because he didn't agree with the number of children that Ducey thought would be produced, testified that he had not studied the assessed valuation of the property involved in the study and did not know the assessed valuation of the project if it should be completed.

In this instance, as in several others, throughout their brief, the respondents, like the Court of Appeals, made use of evidence that had been objected to and had been introduced for a limited purpose only. The first 40 plaintiffs' exhibits were documents which had been prepared by MHDC and were in the possession of the Village Trustees at the time they made their decision at the local level. They were introduced over objection of the Village and admitted solely for the purpose of showing that the documents were in the hands of the Trustees and not for the truth of the matters purportedly contained within them. (Tr. 158, 194)

In most instances the respondents made no attempt during the course of the trial to support the exhibits by the testimony of those persons who prepared them. Thus, the Village was denied the right to cross-examine or to inquire into the validity of the exhibits. Nevertheless, the respondents now seek to argue the substance of these exhibits as if the matters contained had in fact been proven during the course of the trial.

For example, reliance is placed upon a traffic report prepared by Barton Aschman Associates and identified as Plaintiffs' Exhibit 13. No one from Barton Aschman appeared to testify in support of that report, and the reference to the transcript contained in the respondents' brief simply indicates that the study had been commissioned by MHDC. Yet, the respondents now argue the substance of the consultant's report.

This is the pattern exhibited throughout the respondents' brief. They, for example, argue extensively from a study issued by the Cook County Office of Economic Opportunity. This exhibit, again admitted over the Village's objection, was not verified by anyone who made the study, and the Court permitted its admission only for the purpose of showing that it was before the Village Board and not for the truth of the assertions. Yet, the Court of Appeals apparently relied upon this document.

MHDC contends that it had consulted with the staff of the Village for preliminary review of the proposed development. Such consultation of course goes on for every application for zoning change and in no way is controlling on any of the issues in this case. What is of great significance is the testimony of the Village Planner, Mr. Kesler, that he, like Hanson the Village Manager, offered his assistance to MHDC after the hearing in finding other sites, but MHDC never used his services. (Tr. 773)

Reference is made to the self-serving exhibits designated as Plaintiffs' Exhibits 20, 21, 22, 27 and 35. These exhibits were not substantive in any manner and simply admitted for the purpose of showing that they were before the Board of Trustees at the time of action.

The claim that the questions raised by the Plan Commission were promptly resolved by MHDC simply is contrary to the fact that MHDC insisted upon what the Plan Commission found to be spot zoning, and then refused to accept the Village Planner's offer of assistance in seeking alternative sites.

The Need for Low and Moderate Income Housing.

In arguing a need for low and moderate income housing, the respondents rely on a Village report adopted after the hearings in question, which recognized the need for some units of moderate and low income housing. In their brief the respondents argue that their decision was made upon a study by the Institute of Urban Life, which was admitted in evidence as Plaintiffs' Exhibit 18. Here again, its admission was over objection of the Village and it was admitted for the limited purpose of showing that it was one document which had been presented by MHDC at the hearing and subsequently submitted to the Board of Trustees. No effort was made to introduce any testimony by the Institute of Urban Life to support the findings of that study, which of course encompasses areas well beyond the Village of Arlington Heights. The Court of Appeals apparently again relied upon this study, failing to note the limited purpose for which it had been admitted in evidence and the failure to support the study by qualifying testimony.

Again, Ferrara testified to a market study that he had made. This study had consisted of an inquiry of 900 people; 173 were eligible for 236 housing, and 25 of those were residents of Arlington Heights. Ferrara did not know whether low and moderate income housing was available in the towns where the other eligibles lived. (Tr. 293) He had not made a survey to determine whether the eligibles desired to live in the kind of housing proposed by MHDC.

Thus, the evidence as to need for low and moderate income housing in the Village of Arlington Heights is sketchy at best and has, in any event, no relationship to racial composition.

The fact that the Village has rezoned 60 parcels of land for multiple-family development indicates the desire of the Village to produce a multiplicity of housing types and to accommodate different lifestyles within the community. The fact that some of these projects are adjacent on one side to single-family homes indicates merely that multiple-family developments are used as buffers under appropriate conditions. No reference is made in the respondents' brief to the numerous rejections by the Village of multiple-family developments of an unsubsidized nature when the location was inappropriate.

The only other 236 project ever submitted in Arlington Heights was actually withdrawn before it was ever presented to the Village Board. (Tr. 853) There is no evidence that the petitioners have approved rezoning for 90% of the apartment developments proposed to be built in the Village. The evidence with respect to the rental range for apartments indicates that apartments are available as low as $160.00 a month. (Tr. 777)

Contrary to the statement in the respondents' brief, there is no evidence that there are not units available that persons of moderate income can afford. The respondents' references to the transcript simply do not support the assertions made in their brief.

Residential Segregation in the Arlington Heights Area.

As previously indicated, the testimony of Pierre deVise at best shows that 3,244 blacks could afford housing in Arlington Heights based on the 1970 census figures with respect to income and housing. If a substantial number of blacks do not reside in Arlington Heights, therefore, it is not the result of the zoning pattern or even the economics of the market place, but rather for reasons known only to black home seekers and to other factors clearly not related to the Village's zoning function. 373 F. Supp. 208, 210.

The statements made with respect to respondents, Guthrie and Ransom, who were employed at the Honeywell Plant

simply are not related to the issues in this case. As we shall indicate below, there is no evidence that either would qualify for the MHDC project. One is a homeowner in Chicago; the other occupies a home in Evanston. 373 F. Supp. 208, 210.

It is not true that no black workers have been able to find housing they can afford in Arlington Heights. The record nowhere so indicates and the testimony of Mr. Ransom at page 322 was properly stricken. Guthrie conceded in fact that he had never actually sought out any housing from any realtor in Arlington Heights. (Tr. 221)

Again, most of the respondents' argument under this point in their Statement of Facts is based upon exhibits prepared by the Office of Economic Opportunity and the Urban League, and which were admitted solely for the purpose of showing that they were before the Village Board at the time of decision and not for the truth of the facts therein stated. No representative of the OEO or the Urban League was present to testify or verify in any respect the substance of these exhibits. Yet, these totally unverified exhibits became the basis for the Court of Appeals' conclusions.

The Effect on Minorities of the Rejection of the MHDC Development.

Respondents argue that the refusal to permit construction of Lincoln Green will be to virtually maintain the all-white housing patterns of Arlington Heights and deprive non-white citizens of housing and employment opportunities. There is of course no evidence in the record to support this conclusion. The citations to the transcript simply do not bear out this conclusion. The testimony of Mr. deVise, upon which much of the respondents' argument is based, is simply that "blacks make up about 40% of the potentially eligible population for moderate income housing in the SMSA. . . ." (Tr. 592)

There is actually no evidence to show any relationship between the rejection of the MHDC development and the racial character of the Village of Arlington Heights. The Court of Appeals' conclusion that, if Lincoln Green were built it would be an integrated community, is not based upon any evidence. Since there could have been more than 3,000 blacks residing in Arlington Heights based upon the 1970 census figures without the MHDC development, it is difficult to conclude that the building of the MHDC project would in any way change the racial composition of the community. Moreover, this argument ignores the basic fact that what is at issue here is not racial discrimination in any manner, but simply a refusal to alter a valid and existing zoning pattern so that people of low income can occupy property they would otherwise not be able to afford.

There is no need for any signal that the Village of Arlington Heights is no longer closed to blacks. The Village has never been closed to blacks, and there is no present or future intent to ever attempt to close the Village to blacks or anyone else.

There is no demonstrable effect on minorities which arises from the rejection of the MHDC development. As we have indicated in our original brief, the mere fact that a valid police power regulation might have a greater impact upon poor people or a minority group does not invalidate that regulation. The highly emotional and totally unsupported allegations which appear in the Statement of the Case presented by the respondents cannot fill the absolute void of evidence which occurs in this case as far as the respondents are concerned.

The Village Hearings and the Community Response.

The respondents in thier brief attempt to create out of whole cloth a fabric of racial bias in the history of the hearings before the Plan Commission and the Village Board. The evidence clearly does not support any such characterization. There is no evidence that the Commission or Trustees were "besieged with

advice on the social issue." In any event, the trial court specifically found that the decision was not based on any racial motivation, and the Court of Appeals refused to disturb this finding. As a matter of fact, neither opinion indicates that the Court took seriously this totally unsupported claim of racial bias in the hearings below.

The fact, if true, that certain of the objectors might have been motivated by racial factors of course does not either imply that such considerations influenced the Village officials, or in any way affect the validity of the proceedings before the Village Board. *Ranjel* v. *City of Lansing*, 417 F. 2d 321 (6th Cir. 1969).

The fact that the respondents were able to come up with two or three letters to a local newspaper from a town of almost 70,000 of course does not demonstrate any racial bias upon the part of the Plan Commission or the Village Board. While certain of the homeowners filed petitions in opposition to the project, the respondents concede that there were also staunch supporters, including church groups and the League of Women Voters, and that, in fact, petitions in support of the proposal were received and considered as well as those of the objectors.

The so-called emotional racial reactions on the part of overflowing crowds simply are figments of the respondents' imagination. The references to the transcript simply indicate that the hearings were well attended and that there were staunch partisans on both sides. Significantly, Joseph Kesler, the Village Planner who attended the meetings of the Plan Commission, testified that there were similar meetings on other projects attended by just as many people, and that these were usually meetings or hearings which involved multiple-family projects. (Tr. 112-113)

The ability to cite three letters to the editor and one letter to the Plan Commission and Village Board hardly demonstrates the kind of bedlam and racial antagonism that the respondents would like this Court to believe took place. As a matter of fact,

the testimony of Mrs. Harms, the only Trustee actually called by the respondents, was that she had received a total of one letter in opposition to the project. (Tr. 168)

To equate this evidence, if it can be dignified by calling it such, with the situation in the *Dailey* case simply indicates that the respondents have lost touch with reality. The opinion in *Dailey* v. *City of Lawton*, 425 F. 2d 1037 (10th Cir. 1970) was based upon specific findings by the District Court that the actions of the planning commission and city council were a direct result of the bias and prejudice on the part of the owners of other property in the North Addition, which was carried over to members of those bodies. There were further findings that the motivation for the denial of the zoning change was to keep a large concentration of Negroes and other minority groups from living in the North Addition. The evidence in *Dailey* noted that the racial situation was discussed in connection with the circulation of the petitions, and that the sponsors had received anonymous phone calls opposed to the project on a racial basis. A member of the planning commission testified that the opposition was based on racial bias. 425 F. 2d 1037, 1039.

No such evidence is present in the record in this case and no such findings were made by the trial court. In fact, the trial court here specifically found that the action of the Village Board was not racially motivated.

An examination of *Kennedy Park Homes Asso.* v. *City of Lackawanna*, 318 F. Supp. 669, and *United States* v. *City of Blackjack*, 508 F. 2d 1179, also shows no relationship between the factual situation there and what transpired in Arlington Heights.

The objections of the property owners presumably were based on the opposition to multiple-family zoning usually expressed by single-family homeowners when a project with a density of three times the existing density is proposed to be inserted in the midst of a prime and well-established single-family area. It is indeed ironic that in the body of their brief, the respondents

argue that what this Court should consider is the effect of the decision and not the motivations of those who made the decision. Yet, in their Statement of the Case, the respondents would attempt to convince this Court that, contrary to the facts and the evidence, the Village Board was motivated by racial bias.

The Proceedings Below.

As indicated in the respondents' brief, much of their case on the trial was based upon their own exhibits which were admitted for the sole purpose of showing that they were before the Village Trustees when the development was rejected. In the Court of Appeals and in this brief, the limited purpose for which those exhibits were admitted is being stretched to indicate that somehow or other the substance of those exhibits were proven at the trial.

The respondents' brief of course fails to indicate in any manner the nature of the evidence adduced by the Village during the course of the trial. That evidence included the expert testimony of the Village Planner, Mr. Kesler, the zoning and planning consultant, Mr. Campbell, the real estate appraiser, Mr. Opelka, Trustee Alice Harms, and Planning Engineer, John Best. All is ignored in the respondents' brief.

The respondents also fail to note the numerous examples of rejection of other improperly located multiple-family developments. Nowhere is there any evidence of any "tremendous" need for low and moderate income housing in Arlington Heights, nor do the respondents remind this Court that there are only a half dozen communities in the Chicago metropolitan area with more than 50,000 residents.

Contrary to the allegations contained in the respondents' brief, the record does not demonstrate that there were no other suitable sites for low and moderate income housing in the Arlington Heights area. In fact, MHDC's only other multiple-family development, Rand Grove Village, is located three-

fourths of a mile away from the corporate limits of the Village of Arlington Heights.

Mr. Kane admitted that the subject property could be developed for single-family homes under the present zoning under Section 235 federal funding if the land could be bought for $200,000 instead of $300,000, and that the cost of the land was the only impediment to single-family development. (Tr. 54) Kane further testified that two sites in Arlington Heights were rejected because they were a mile or a mile and a quarter away from shopping facilities. He rejected other sites because of the purported distance from schools and shopping facilities. As a matter of fact, Plaintiff's Exhibit 56 shows the nine possible sites were rejected out of hand because they were thought too remote or too far from convenience shopping centers or too closely surrounded by single-family homes.

Despite Mr. Kane's testimony that he rejected these sites because of the distance from schools and shopping, the fact of the matter is that the Rand Grove facility is two miles away from the nearest shopping facility and two miles away from the nearest school.

One of the five possible sites was rejected because no reply had been received from a telephone call and letter; several of the remaining four were rejected because of price, although there is no evidence of any direct attempt to negotiate the acquisition of any other site. Significantly, the Village Manager had initially met with Mr. Kane to suggest sites available in the community, and Mr. Kesler's willingness to meet after the hearings to suggest other sites was totally ignored.

The lack of evidence that the respondents really did not seek alternate sites in an area which would be more appropriate for multiple-family zoning is reflected in Chief Judge Fairchild's dissenting opinion, where he says:

> "A review of the record reveals that, at the time of the Village's decision to deny the variance, there were at least nine undeveloped tracts of land in excess of fifteen acres zoned R-5 (multi-family housing). The record does not contain a sufficient showing by plaintiffs that it was not reasonably possible to construct the proposed project on one of these sites." 517 F. 2d 409, 416.

In fact, as indicated, Plaintiffs' Exhibit 56 indicates that these nine sites were rejected without any extensive investigation. Thus, the contention of the respondents that there were no economically feasible and suitable alternate sites simply is not supported by the record. In the course of cross-examination, Kane indicated that two of the sites were rejected because they were a mile away from shopping. (Tr. 62) It was his position that all the developments had to be within one mile of shopping facilities (Tr. 63), although, of course, their existing project, Rand Grove, did not meet that requirement. Kane also testified that he personally had contacted only one broker or owner of alternative parcels. (Tr. 69)

ARGUMENT.

I.

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PETITIONERS' REFUSAL TO PERMIT THE CONSTRUCTION OF LINCOLN GREEN VIOLATED THE FOURTEENTH AMENDMENT.

A. The Record Fails to Show That the Petitioners' Refusal to Permit the Construction of Lincoln Green Was Racially Motivated.

The trial court specifically found that the plaintiffs failed to carry their burden of proving discrimination by defendants against racial minorities. 373 F. Supp. 208, 210. The Court of Appeals refused to set aside this finding of fact. It specifically found that the evidence did not support a finding that Arlington Heights administered its zoning policy in a discriminatory manner. 517 F. 2d 409, 412. Yet, the respondents in their brief somewhat hysterically maintain their unsupported allegation that the petitioners' refusal to rezone a 15-acre tract, located in the midst of a single-family area, to permit multiple dwellings at three times the single-family density, was racially motivated.

This Court has repeatedly held that, even in a civil rights case, the motivations of municipal officials are not subject to judicial inquiry. *Palmer* v. *Thompson,* 403 U. S. 217 (1971), 20 L. ed. 2d 438; *United States* v. *O'Brien,* 391 U. S. 367, 383 (1968), 20 L. ed. 2d 672, 683; *Detroit United Railway* v. *Detroit,* 255 U. S. 171 (1920), 65 L. ed. 2d 570; *Hing* v. *Crowley,* 113 U. S. 708 (1884), 28 L. ed. 1145, 1147.

Despite their repeated assertions, the respondents fail to point out anything in the record which is susceptible of showing racial motivations on the part of the Village Plan Commission

or the Village Trustees. The fact that the public hearings were well attended and frequently emotional does not prove racial motivation on the part of Village officials. As Mr. Kesler pointed out, zoning hearings involving proposed multiple-family rezoning petitions frequently have produced larger crowds and extreme emotions. The fact that the respondents are reduced to talking about two or three letters which appeared in the newspaper falls far short of proving any racial bias or motivation on the part of Village officials.

The fact that the Village President noted that there was community opposition to the proposed rezoning certainly is no indication of racial bias on the part of President Walsh or anyone else. As a matter of fact, Walsh himself proposed assistance in seeking other sites, and the Village Planner, as well as the Village Manager, made themselves available for such purposes.

The citation of the case of *Dailey* v. *City of Lawton,* 425 F. 2d 1037, simply is of no relevance. In the *Dailey* case the area for which rezoning was sought was totally surrounded by property zoned for high-density, multiple-family purposes. Yet, similar rezoning was denied on the subject property. In the *Dailey* case, the District Court had specifically made findings of racial motivation. The Court had found that there was no evidence in support of contentions that the rezoning was denied for any other reason, and the director of the plan commission in *Dailey* had testified that there was no reason why the property there should not have been rezoned to the R-4 high-density multiple sought for low income housing.

In the instant case, of course, both the trial court and the Court of Appeals recognized that the Village was administering its Zoning Ordinance in a non-discriminatory manner, and all the Court of Appeals held was that, maintaining the integrity of the zoning plan and protecting neighboring property values, both of which objectives were concededly achieved by the Zoning Ordinance, simply did not meet the "compelling interest" test.

It simply is contrary to the facts to allege that the petitioners

admitted they blocked Lincoln Green in response to community opposition, a result they knew would maintain residential segregation in the area. The purpose was maintaining a single-family zoning classification which was completely consistent with the well-established single-family community. It had nothing whatsoever to do with racial considerations.

The other cases cited in the footnote to respondents' brief, including *Kennedy Park Homes, Black Jack, Banks, United Farmworkers,* and *Hawkins,* have no application to the case at bar, particularly in light of the fact that there was no finding by either the trial court or the Court of Appeals of any racial motivation in the instant case.

B. The Petitioners' Refusal to Permit the Construction of Lincoln Green Does Not Unlawfully Perpetuate Residential Segregation.

The holding of the Seventh Circuit was that the rejection of the Lincoln Green proposal has racially discriminatory effects. 517 F. 2d 409, 415. That finding, we respectfully suggest, is totally unsupported by the record in this case. The Court of Appeals ignored the finding of the trial court that the failure to rezone affects low earners "but this affects the entire group, not merely blacks or Mexican-Americans. The Fourteenth Amendment and the Civil Rights Act prohibit discrimination against blacks and certain other minorities but does not afford rights to poor people as such." 373 F. Supp. 208, 210.

Moreover, an analysis of the record clearly indicates that the refusal to rezone Lincoln Green does not have a demonstrable effect of discriminating against minorities.

The Court of Appeals accepted two premises offered by the respondents which simply are not justified by the record. The first was a conclusion reflected in the footnote at page 414 of the opinion that Arlington Heights was the most residentially segregated community in the Chicago metropolitan area among

municipalities with more than 50,000 residents. deVise never said that. What deVise did say was that, based purely on a highly theoretical distribution of black households throughout the metropolitan area, 5% of the population of Arlington Heights would be black, but that was based solely on the economics of the housing market. (Tr. 625) deVise never suggested that the failure of more than 5% of the black population to reside in Arlington Heights was due to anything but the economics of the situation. He described Arlington Heights as a dormitory community. (Tr. 631) It had the most expensive housing of all the communities having more than 50,000 population. Even so, deVise conceded that, based upon the economics of the housing market, at least 3,244 blacks could afford to live in Arlington Heights, of which 378 black households would be able to afford single-family housing in Arlington Heights, and 473 black households would be able to rent housing in Arlington Heights. (Tr. 588) deVise never suggested that the action of Village officials through zoning or anything else was keeping blacks from residing in Arlington Heights. deVise's testimony to the effect that he believed the reasons blacks didn't reside in suburban communities was their fear of lack of acceptance, was stricken from the record. (Tr. 637, 638) The most that can be said is that the economics of the housing market restrict the number of poor people who could afford to live in Arlington Heights.

It is of course not true, as stated by the Court of Appeals, that a greater percentage of blacks than whites are affected by the Village's decision. Even if we accept the premise that blacks would comprise 40% of the eligible prospective tenants for Lincoln Green, that would mean that 60% non-blacks would also comprise the eligible prospective tenants and the impact would be greater on non-blacks than on blacks.

But the assertion that 40% of the eligible prospective tenants would be black simply is not supported by the record. All deVise said was that blacks make up about 40% of the potentially

eligible population for moderate income housing in the SMA. (Tr. 592) The SMA consists of six counties. There was absolutely no evidence in the record to indicate that a single black or Spanish-speaking person would in fact seek to live in Lincoln Green. Here again, as the trial court noted, "there are many reasons why members of minority groups would not necessarily move into the defendant village, besides alleged discriminatory violations." 373 F. Supp. 208, 210.

Respondents' reliance upon *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (1961), and *Wright* v. *City of Emporia*, 407 U. S. 451 (1972) is unavailing. Neither case cited supports the proposition that the refusal to rezone is unlawful. The *Burton* case involved the specific refusal to serve a Negro in a restaurant located in a public building. The *Wright* case involved a dual school system which had the effect of perpetuating racial discrimination in violation of this Court's decision in the *Brown* case.

There is no showing that the Village's action has anything to do with reinforcing or prolonging segregated housing patterns in the Village. The respondents' assertion that the Village's action is subject to "strict scrutiny" and requires a "compelling justification" is not in accord with the numerous decisions of this Court and other courts of appeal throughout the country. *Village of Belle Terre* v. *Boraas*, 416 U. S. 1 (1974), 39 L. ed. 2d 797; *Lindsey* v. *Normet*, 405 U. S. 56 (1972). 31 L. ed. 2d 36; *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1 (1973), 36 L. ed. 2d 16; *Lawrence* v. *Oakes*, 361 F. Supp. 432 (D. Vt. 1973); *Skillken & Co.* v. *City of Toledo*, Nos. 74-2116 and 74-2320 (6th Cir. December 10, 1975); *Citizens Committee for Faraday Wood.* v. *Lindsay*, 362 F. Supp. 651 (S. D. N. Y. 1973), *aff'd* 507 F. 2d 1065 (2nd Cir. 1974).

The result of the Village's action in the present case of course is not to exclude minorities from or perpetuate segregation in Arlington Heights. As indicated in the *Skillken* case, a

rational basis test rather than a compelling interest test is to be applied in testing of zoning ordinances.

The Court of Appeals' analysis that a greater percentage of blacks than whites would be injured by the municipality's actions simply is contrary to the facts. However, *James* v. *Valtierra*, 402 U. S. 137 (1971), stands for the proposition that the fact that a legal requirement may have a greater impact upon the poor or other minority does not render that requirement invalid under the Fourteenth Amendment. The Seventh Circuit reluctantly admitted that *James* stands for the proposition that racial disparity alone, as it relates to the housing project under consideration, would not amount to racial discrimination.

Reliance on the *Dailey* case, as indicated, is simply unwarranted because of the difference in the facts shown by the record. There is no segregative effect which results from the petitioners' refusal to permit construction of Lincoln Green. As the trial court properly recognized, the only effect of that refusal is to deny the right of poor people to live wherever they want to live, notwithstanding a reasonable zoning classification.

The respondents in their brief cite the footnotes in the Court of Appeals' opinion setting forth certain statistical data. The fact of course that the Chicago metropolitan area has seen a shift in population and a shift of job locations does not mean that the Village of Arlington Heights violated the Fourteenth Amendment when it refused an irrational zoning request. There of course is no evidence that the reason only 137 of the 12,000 people who worked in Arlington Heights were black was due to the zoning pattern of the Village of Arlington Heights. In fact, as indicated above, a substantial number of blacks can afford to live in Arlington Heights and their reasons for failing to do so have nothing to do with the zoning pattern of the Village.

Citation of an OEO study showing that almost all the black workers in Arlington Heights reside in Chicago also has nothing to do with the issues in this case. As a matter of fact, there are

more residents of Arlington Heights working in Chicago than there are residents of Arlington Heights working in Arlington Heights. The choice of job locations is obviously dependent on many factors and certainly cannot be used to impute to the Village of Arlington Heights racial motivations in preserving a single-family zoning classification in an area which is and always has been exclusively single family.

Nowhere in their brief do the respondents choose to refer to *Milliken* v. *Bradley*, 418 U. S. 717 (1974), where this Court in a school segregation case held that racial imbalance in itself is not to be equated with a constitutional violation calling for remedy. This Court indicated that the fact that Detroit schools were segregated did not require an intra-district plan outside the corporate limits, absent any showing that the suburban school district had in fact discriminated.

Here, it was conceded by both the trial court and the Court of Appeals that the Village had not discriminated in its zoning pattern. The Lincoln Green proposal does not present a unique opportunity to reverse a supposed trend toward the segregated housing pattern in the Chicago area or in Arlington Heights. There is no evidence that any blacks would occupy the Lincoln Green project, nor is there any evidence that the Zoning Ordinance of the Village of Arlington Heights had anything to do with segregation, either in the Chicago area or in the Village of Arlington Heights. It is not true that the rejection of Lincoln Green means that there will be no integrated or subsidized housing built in Arlington Heights.

The test as to whether a zoning ordinance perpetuates discrimination is whether it has been applied in a racially discriminatory manner and completely out of context with the surrounding land uses. Thus, as in *Dailey* v. *City of Lawton*, 425 F. 2d 1037, it may well be argued that, when an R-4 multiple-family zoning classification is denied to a tract of land which is totally surrounded by an R-4 classification simply because there would be blacks residing on the rezoned site, racial

discrimination exists, but that argument cannot stand when the zoning is applied in a nondiscriminatory manner which is totally consistent with sound zoning and planning principles. Contrary to the contention in the respondents' brief, the *Dailey* case is in no way similar to the instant case.

The citation of *United States* v. *Black Jack*, 508 F. 2d 1179, is likewise totally inappropriate. In *Black Jack*, the village passed an ordinance totally banning multiple-family dwellings after a reservation of federal funds had been made for a low income multiple housing project. In that case the evidence adduced in support of the ordinance was inadequate with respect to traffic and burden on the schools. There was evidence showing no depreciation on nearby properties, which was not controverted. As a matter of fact, the ordinance in that case would have resulted in less than one per cent of the land in the community being zoned for apartments, despite a demonstrated need for apartments. *Black Jack* in fact stands for the proposition that the plaintiff has to establish a prima facie case by demonstrating a racially discriminatory effect. 508 F. 2d 1179, 1185. There was of course no racially discriminatory effect demonstrated in the instant case.

The case of *Kennedy Park Homes Association* v. *City of Lackawanna*, 318 F. Supp. 669, also cited by the respondents, again is not in point. In that case property was rezoned to prevent a specific housing development and a moratorium was declared on new subdivisions, after the intent of the Archdiocese to sell land for a low income housing project was made known. After the rezoning was set aside, the development was prevented by the mayor's refusal to sign a permit for sewer extension, despite the fact that the sewer conditions relied upon to support the refusal of the permit had existed for many years and had not been the basis for any other refusal. The factual situation in *Kennedy* included the fact that the mayor and the president of the city council had signed a petition to the Archdiocese opposing the sale of the land. The City of Lackawanna historically

had demonstrated a segregated pattern with the Negroes being confined almost entirely to one ward. What is significant for the instant case is the holding found on page 694 of the *Kennedy Park Homes* case to the effect that the Fair Housing Act of 1968 does not include discrimination based on poverty.

Crow v. *Brown*, 332 F. Supp. 382, also relied upon by the respondents, does not support the respondents' position. In that case there was a refusal to issue building permits for public low rent housing *on land properly zoned*. The record in that case showed that the denial of the permits was purely for racial reasons.

The case of *United Farmworkers* v. *City of Delray*, 493 F. 2d 799, is not a zoning case. In that instance there was a request to tie into the city's existing water and sewer system which was 800 feet away from the farmworkers housing project site. The city had consistently offered sewer service to other property outside the corporate limits. Under those circumstances the Court held that since the city had provided services outside its geographic limits, it must do so in a racially nondiscriminatory manner. The evidence was clear that the minority citizens' requests were refused, but white citizens' requests were granted. The city's master plan had been changed for whites, but not for farmworkers. As a matter of fact, at page 808 of the opinion the Court pointed out that the farmworkers' appeal was not based primarily on a claim of a denial of a fundamental right to decent housing, citing *Lindsey* v. *Normet*, 405 U. S. 56, or upon a claim of discriminatory treatment engendered by a suspect wealth classification, citing *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1. Clearly, in *United Farmworkers*, there was a denial of equal protection because the minority group there was denied privileges regularly extended to white citizens. No such distinction is shown in the case at bar.

C. It Was Not Necessary to Show Compelling Public Justification to Support Petitioners' Rejection of Lincoln Green.

The respondents rely upon the Court of Appeals' determination that the refusal to amend the Zoning Ordinance could only be justified by a compelling state interest. As we indicated in our original brief, the compelling interest test should not be applied to the case at bar.

The respondents make no attempt to answer the substantial line of cases in which this Court and the various courts of appeal have held in zoning cases and similar actions that, because there was no fundamental constitutional right at stake, the compelling interest test was not appropriate.

There is no attempt made to distinguish the clear holding of this Court in *Village of Belle Terre* v. *Boraas*, 416 U. S. 1 (1974), that a zoning ordinance involved no fundamental right guaranteed by the Constitution. Also ignored are the holdings of this Court in *Lindsey* v. *Normet*, 405 U. S. 56 (1972), and *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1 (1973), which clearly held that in the case of housing there is no need of justifying a law by showing compelling state interest.

Totally ignored is the case of *Skillken & Co.* v. *City of Toledo*, Nos. 74-2116 and 74-2320, decided by the Court of Appeals for the Sixth Circuit on December 10, 1975. There in a zoning case the Court of Appeals specifically held that the District Court erred in applying the compelling interest test rather than a rational basis test in determining the validity of the Toledo zoning ordinance. Also totally ignored is *Citizens Committee for Faraday Wood* v. *Lindsay*, 362 F. Supp. 651, *aff'd* 507 F. 2d 1065 (2nd Cir. 1974), where the Court held that low income status is not recognized as a suspect classification.

No mention is made in the respondents' brief of the recent decision in *Construction Industry Association of Sonoma*

County v. *City of Petaluma,* No. 74-2100, decided by the Court of Appeals for the Ninth Circuit, wherein the Court rejected the concept that an allegedly exclusionary zoning ordinance was a violation of the Fourteenth Amendment. The Court there insisted that the test of a zoning ordinance was whether it bore any rational relationship to a legitimate state interest. It refused to apply the compelling interest test. This Court denied a petition for certiorari in the *Petaluma* case on February 23, 1976, 44 L. W. 3473.

In the case of *Ybarra* v. *City of Town of Los Altos,* 503 F. 2d 250, the Court of Appeals for the Ninth Circuit specifically refused to apply the compelling interest test in a case challenging a large-lot zoning ordinance on the grounds that it excluded Mexican Americans. The Court there held that discrimination against the poor does not become discrimination against a minority simply because there is a statistical correlation between poverty and ethnic background. 503 F. 2d 250, 253.

Thus, the Court of Appeals' application of the compelling interest test simply is contrary to the settled law on the subject.

Respondents' convoluted argument that an affirmative duty has not been imposed upon Arlington Heights simply flies in the face of the language of the Court of Appeals' opinion which mandates the Village to take the affirmative action of changing the Zoning Ordinance because of the alleged possibility that blacks may reside in the housing which could then be built. At page 414 of the opinion, the Court said: "Since no direct action attributable to Arlington Heights created the segregated housing pattern, the municipality argues that it has no affirmative duty to alleviate the problem. We do not agree." That language clearly imposes an affirmative duty, contrary to the decision of this Court in *Milliken* v. *Bradley,* 418 U. S. 717 (1974), and the numerous other cases cited in this and our original brief.

The footnote in the respondents' brief to the effect that the Village Plan was adopted in 1959 and most of the homes were built prior thereto is not supported by the record. Mr. Opelka

testified that the subject property adjoins the rear yards of single-family homes, the majority of which were built in the last 10 years. Across from the high school of Oakton, the homes were built in the last few years, and some new homes are under construction. On Euclid Avenue, across the street from the subject property, are homes which were built in the last 5 to 10 years. (Tr. 914, 915, 916) Thus, a substantial number of single-family homes were built after the adoption of the 1959 Plan and in reliance upon that Plan.

The petitioners' legitimate justification for refusing to change the zoning is the protection of surrounding property values and the preservation of the integrity of the Zoning Ordinance. These objectives are of course the proper objectives of any zoning ordinance. The respondents fail to cite a single case relating to so-called exclusionary zoning wherein the refusal to rezone has been held invalid under circumstances similar to the case at bar.

No attempt is made to even mention, let alone distinguish, *Ybarra, Skillken,* or *Confederation de La Raza Unida* v. *City of Morgan Hill,* 324 F. Supp. 895 (N. D. Calif. 1971), all zoning cases cited in our original brief and all of which refused to apply the strict scrutiny test.

We have already demonstrated in our original brief that, applying the criteria set forth by the courts of the State of Illinois in determining the validity of a zoning ordinance, the refusal to rezone the subject property in the midst of a single-family area to increase the density threefold was a reasonable and legitimate exercise of the police power. Again, we state that the possibility that housing will be occupied by low or moderate income persons of whatever race does not justify the application of different standards when, admittedly, the zoning ordinance has not been administered in a discriminatory manner and is, in fact, a totally reasonable exercise of the police power.

The respondents' assertion that the courts have recognized the necessity for considering the rights of non-residents as well

as residents in assessing the reasonableness of suburban zoning actions simply ignores the holding of this Court in *Warth* v. *Seldin*, 422 U. S. 490 (1975). See also, *Cornelius* v. *Parma*, 374 F. Supp. 730 (N. D. Ohio 1974), *aff'd* 521 F. 2d 1401, *cert. denied* 3/8/76, 44 L. W. 3501.

The case of *Lakeland Bluff, Inc.* v. *County of Will*, 114 Ill. App. 2d 267 (1969), 252 N. E. 2d 765, applied the conventional tests for determining the validity of a zoning ordinance which were set forth in our original brief. The Court at page 279 specifically indicated: "We do not predicate our conclusion upon the need for lower cost housing." *Lakeland* is simply a garden variety zoning case in which the need in the community for mobile homes was considered. *Glassey* v. *County of Tazewell*, 11 Ill. App. 3d 1087 (1973), 297 N. E. 2d 235, was another mobile home park case in which the Court considered as one of eight factors the community need for the proposed use.

The statement in the respondents' brief that the evidence here clearly establishes "a desperate areawide need for low and moderate income housing" is neither supported by the record, nor does it justify putting high-density multiple housing in the midst of a single-family area. The Courts of Illinois, while occasionally considering need for a specific use as one possible factor in determining the validity of a zoning restriction, have refused to give this factor any controlling weight. *Locker* v. *City of McHenry*, 89 Ill. App. 2d 457, 643 (1967).

The proposed development clearly is not complimentary to the surrounding housing, but, as the trial court found, would have a detrimental effect upon the value of surrounding properties. This diminution of neighboring home values is not a reflection of the prejudice of the local homeowners, but in fact the workings of the housing market wherein the intrusion of a high-density development in the midst of a single-family area inevitably lowers property values of the existing homes.

The fact that multiple family might represent the "highest and best use" from a purely economic standpoint is neither conclusive with respect to the validity of a zoning ordinance, nor does it support a finding of a violation of the Fourteenth Amendment because of racial discrimination. As the Court stated in *Seith* v. *City of Wheaton*, 89 Ill. App. 2d 446 (1967) at 451 in passing on a restriction for single-family use: "Although the highest and best use of the property may be for either duplex and less dense multiple use or the fact that the property would be worth substantially more to the owner if the restriction were removed is not in our opinion sufficient to overcome the presumption of the validity of the Wheaton zoning ordinance . . ."

There are no public interest considerations favoring the development of Lincoln Green, however, the respondents choose to define the concept of "public interest." In *Stalzer* v. *Village of Matteson*, 14 Ill. App. 3d 891 (1973), 303 N. E. 2d 489, the subject property had been vacant for 70 years and adjoined a tract zoned for industrial use to the west and to the north. No expert witness for either side testified that the R-1 zoning on the property represented its highest and best use. The Court found that the existing zoning and uses of nearby property were incompatible with the R-1 zoning and the light industrial uses to the immediate north of the subject property made such classification incongruous. The case was finally decided on the basis that the zoning imposed a substantial reduction in the value of the property owned by the plaintiffs. In the instant case, the owners are not even plaintiffs, and the property is admittedly worth $75,000 more for the permitted single-family use than the owners will secure under the contract of sale.

The respondents refer to the District Court's finding that the refusal to rezone was based upon "the integrity of the Village's zoning plan." All the evidence supports the conclusion of the District Court, and that finding was not disturbed by the Court of Appeals. Apparently the respondents complain because the development subsequent to 1959 was in fact in conformance with the 1959 Plan. The rezonings to multiple-family use were undertaken by the Village for the purpose of providing a multiplicity

of housing types in the community at appropriate locations. Despite the rhetoric of the respondents, there is no evidence of any need to accommodate low and moderate income persons working in the Village of Arlington Heights. The record is totally devoid of any specific evidence as to the number of persons working in the Village who would meet the criteria for low and moderate income housing, and would choose to reside in Lincoln Green.

It was unnecessary to show any compelling justification to support the refusal to permit construction of Lincoln Green in the location sought by the respondents. The refusal to rezone, when such rezoning would be detrimental to surrounding property values, violate the Village's established zoning plan, and result in a totally incompatible development in a well-established single-family area, is not a violation of the equal protection clause or the Fourteenth Amendment.

II.

THE PETITIONERS' REFUSAL TO PERMIT DEVELOPMENT OF LINCOLN GREEN DOES NOT VIOLATE THE FAIR HOUSING ACT OR THE CIVIL RIGHTS ACT.

A. Introduction.

The trial court in this case specifically found that no specific section of the Fair Housing Act is referred to in the pleadings, and none seem applicable to the facts of this case. 373 F. Supp. 208, 209. In referring to the Civil Rights Act and the Fair Housing Act, the trial court found that these statutes do not reach zoning per se. 373 F. Supp. 208, 212. The Court of Appeals made its decision solely on the basis of the Fourteenth Amendment, without reference to either the Civil Rights Act or the Fair Housing Act.

The respondents still do not favor us with any specific violation of any specific provision of either statute. Section 804(a)

of the Fair Housing Act makes it unlawful "to refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin." Clearly, there is no evidence in this record of any violation of any of the petitioners of this section. Section 817 of the Fair Housing Act makes it unlawful to interfere, coerce or intimidate any person in the exercise of their rights granted under Sections 803, 804, 805 and 806 of the Statute. No evidence exists in this record to support any charge of such interference or coercion.

The case of *United States* v. *City of Black Jack*, 508 F. 2d 1179, is completely distinguishable on its facts. As indicated above, the city there had passed an amendment to its ordinance after HUD had issued a feasibility letter for federal funding of a 236 project. That amendment would have prohibited the construction of any multiple-family dwellings and made present ones nonconforming uses. The evidence in that case was clear that many blacks would live in the development proposed and that the broad exclusionary ordinance would deny persons housing on the basis of their race. No such situation pertains in the case at bar.

The Village is not using its zoning power to interfere with private efforts which would appreciably reduce segregation in its jurisdiction, as alleged by the respondents. Instead, it is refusing to amend its perfectly proper Zoning Ordinance merely because the proposed project conceivably could house some blacks, as well as whites. No violation of either the Fair Housing Act or the Civil Rights Act has been demonstrated.

In the case of *Trafficante* v. *Metropolitan Life Insurance Co.*, 409 U. S. 205 (1972), this Court held that any person who claims to have been injured by a discriminatory housing practice had standing to sue under the Civil Rights Act. The case involved persons in a housing unit who claimed to have been injured by discrimination against non-whites in the rental of the

apartments of the complex in which they resided. That decision clearly has absolutely no bearing on the factual situation in the case at bar.

B. Arlington Heights' Conduct Did Not Have the Effect of Perpetuating Segregation and It Had No Burden to Show a Compelling Nonracial Justification for the Refusal.

There is nothing in the record to support the respondents' claim that Arlington Heights has become a 99% white city through zoning and other municipal decisions. In fact, the zoning decisions of the Village of Arlington Heights have produced some 6,000 apartments and 12,000 homes available to all persons without regard to race. Undoubtedly, the housing market in the past decade has prevented many people lacking sufficient income from buying or renting homes in Arlington Heights, but this fact does not mean that the Village of Arlington Heights has to abandon its Zoning Ordinance under the Fourteenth Amendment, the Civil Rights Act, or the Fair Housing Act. There is no evidence that the Village has exploited anyone.

As we have indicated above, the compelling interest test is not applicable to this zoning controversy. We have also distinguished the *Black Jack* case at length. There is no evidence that Lincoln Green would reduce segregation, or in fact that a single black person would necessarily reside in the Lincoln Green project. It was clear in the *Black Jack* case that black citizens were being effectively barred by the passage of an ordinance prohibiting any multiple-family development.

The Zoning Ordinance is not being used to frustrate a unique development which would in fact be significantly more integrated than the community. The Zoning Ordinance is being used in conformance with the requirements of the police power and being applied in an admittedly nondiscriminatory manner. It is clear from the language of the Court of Appeals' opinion that, in fact,

it is seeking to impose on the Village of Arlington Heights the "affirmative duty to alleviate the problem (of segregated housing in the Chicago area)."

In citing *Acevedo* v. *Nassau County*, 500 F. 2d 1078 (2d Cir. 1974), 1081, the respondents fail to note that *Acevedo* held that there was no duty under the Fair Housing Act on any government body to construct or to "*plan for, approve and promote* any housing." 500 F. 2d 1078, 1082. The citation from *Acevedo* applies to "refusing to accede to a reasonable rezoning request." Here, neither the District Court nor the Court of Appeals determined that the refusal was an unreasonable one and, in fact, the refusal was totally consistent with sound zoning principles and admittedly the result of a nondiscriminatory administration of the Zoning Ordinance.

An affirmative duty is being sought to be imposed upon Arlington Heights—that is the duty to change its ordinance, regardless of the soundness of the ordinance from a zoning and planning standpoint, to accommodate a hypothetical minority occupancy at the expense of the surrounding property owners and the integrity of the zoning plan.

C. The Acts Complained of Do Not Violate Title VIII of the Fair Housing Act.

Again, the respondents have failed to point out any specific acts which violate Title VIII. The *Trafficante* case turned on standing to sue under the Civil Rights Act. It of course had nothing to do with the Fair Housing Act. HUD's administrative criteria to provide for integration is not at issue in this case. We concur in a broad interpretation of the Civil Rights Act of 1966, but there is no evidence, intent, or accomplishment of racial discrimination by the actions of the Village in this case.

The case of *Clark* v. *Universal Builders, Inc.*, 501 F. 2d 324 (7th Cir. 1974), is clearly not in point. The decision involved private action in creating a dual housing market and

turned on the question of the propriety of granting a directed verdict for the defendants at the close of plaintiff's case. *Clark* merely held that the allegations made a *prima facie* case for a violation of the Civil Rights Act. It has no relationship to the questions raised in this action.

We have previously distinguished the *Black Jack, Kennedy Park Homes,* and *Delray Beach* cases. *Sisters of Providence* v. *City of Evanston,* 335 F. Supp. 396 (N. D. Ill. 1971), merely held that a complaint stated a cause of action. The allegations in that complaint were substantially different than those in the case at bar. The *Black Jack* case, even if good law, is clearly distinguishable because of the proof in that case that blacks would in fact reside in an already approved federally aided project, and that the city had taken the affirmative action of barring all multiple-family development as soon as federal funding of the project became a reality.

The Village of Arlington Heights has maintained single-family zoning on the subject property since its first Zoning Ordinance long before the advent of Lincoln Green. The entire area has developed in reliance upon that single-family zoning, which is completely in keeping with sound planning and zoning principles. The possibility that some blacks may reside in the Lincoln Green project is not a sufficient basis for requiring Arlington Heights to abandon this undoubtedly reasonable zoning restriction.

Reliance on the *Lackawanna* case is particularly ironic in view of the specific holding at 318 F. Supp. 669, 694, that "the nature of the discrimination prescribed under the Fair Housing Act is limited in that it does not include discrimination based on poverty."

D. The Court's Interpretation of Similar Legislation Does Not Show the Complained of Action Violates the Fair Housing Act.

The respondents attempt a bootstraps approach by relying upon this Court's decision in *Griggs* v. *Duke Power Co.,* 401 U. S. 424 (1971). That case decided under the Equal Employment Opportunity Act of course stands for the proposition that employment testing must be job related. The respondents do not cite the language of this Court in *Griggs* at 431, where the Court said: "Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group." What *Griggs* says is that arbitrary and unrelated job tests may not be used to discriminate against a racial minority. It clearly does not require that all reasonable legislative acts must be set aside merely because minority group members might benefit.

The *McDonnell* case is likewise not in point and simply required the remandment for trial of a complaint alleging that the reason for refusing to reemploy a Negro violated Title VII. The Court there noted that, if the reason assigned for refusing to reemploy was not pretextual or discriminatory in its application, the employer's refusal to rehire must stand. The case clearly is not applicable to the facts at bar.

The respondents' argument must of course fall because the action of the Village in refusing to alter its existing, valid zoning restrictions was not predicated on any racially discriminatory pretext, nor, as was conceded by both the trial and the Court of Appeals, was the Village's zoning administration discriminatory in character.

Griggs and the cases following it do not impose upon the Village any requirement that it zone for the purpose of providing a racial quota in the housing pattern of the Village. The most

recent employment case dealing with this question in the Court of Appeals for the Second Circuit was determined on the basis of the Civil Rights Acts of 1866 and 1871. In the case of *Kirkland* v. *Dept. of Correctional Services* (U. S. D. C., S. D. N. Y., August 6, 1975), 11 FEP Cases 36, the Court specifically rejected the concept of racial quotas in the hiring of officers in the New York State Department of Correctional Services. The Court there noted:

> "The replacement of individual rights and opportunities by a system of statistical classifications based on race is repugnant to the basic concepts of a democratic society.
>
> "The most ardent supporters of quotas as a weapon in the fight against discrimination have recognized their undemocratic inequities and conceded that their use should be limited. Commentators merely echo the judiciary in their disapproval of the 'discrimination inherent in a quota system.'"

In *Kirkland* the Court noted with approval the dissenting opinion of Mr. Justice Douglas in *DeFunis* v. *Odegaard*, 416 U. S. 312 (1974), 40 L. ed. 2d 164, where at page 336, Mr. Justice Douglas said:

> "There is no constitutional right for any race to be preferred. The years of slavery did more than retard the progress of blacks. Even a greater wrong was done the whites by creating arrogance instead of humility and by encouraging the growth of the fiction of a superior race. There is no superior person by constitutional standards."

However appropriate the language of the Equal Employment Opportunity Act may be with respect to meeting problems in that area, neither that statute nor cases decided under it have any relevance to a situation where a municipality in a non-discriminatory manner merely seeks to preserve the integrity of its zoning pattern and protect surrounding property values from the incursion of a high density use.

III.

THE RESPONDENTS HEREIN HAVE NO STANDING TO SUE.

As pointed out in our original brief, the question of standing was originally raised by the petitioners in a pretrial motion and the question of standing was carefully considered by the trial court. Thus, the question is properly before this Court. We respectfully suggested that the case of *Warth* v. *Seldin*, 422 U. S. 490, 45 L. ed. 2d 343, is conclusive.

The individual respondents clearly do not have standing. The two individuals who actually testified in the case, Guthrie and Ransom, were black citizens living outside of Arlington Heights. Guthrie drives his car from the south side of Chicago where he owns his two-flat home. He purchased his home in 1973 for $21,000 and receives $160 a month rent from the other unit. His wife is employed, but he did not know her salary. He had not gone to any real estate brokers in Arlington Heights or asked to be shown any housing. There was no testimony as to the total family income. It is clear that he never personally sought housing in Arlington Heights.

Mr. Ransom lives in a single-family home in Evanston with his son and his mother. His mother is also employed and, here again, there is no showing that he was eligible by income to reside in Lincoln Green. He testified he had never sought out any housing in Arlington Heights.

The allegations of the complaint in fact fail to set forth the kind of facts which this Court found was necessary in *Warth* to give any standing to the individual plaintiffs. There were no allegations that either Ranson or Guthrie either desired or would occupy the Lincoln Green housing if constructed. Mrs. Maldonado of course resides in Arlington Heights and therefore clearly cannot be held to have been zoned out of the Village.

The Village of Arlington Heights, contrary to the statement in the respondents' brief, of course has not interferred with the private housing market to prevent the construction of Lincoln Green. It is in fact the workings of the housing market which have set the price level and determined the occupancy of housing accommodations in Arlington Heights.

The respondents in their brief make no effort to justify the standing of the Northwest Opportunity Center or Mrs. Maldonado. Clearly, neither have any standing. MHDC however alleges that it has standing. In this regard it should be noted that MHDC is in fact not injured in any manner by the refusal of the Village to rezone at its request. It has a contract to purchase based upon the ability to secure zoning and financing under Section 236. The failure to secure either results in the cancellation of the contract. Its 99 year lease for $1.00 a year is also conditioned on zoning and the ability to secure 236 financing. Having failed to secure either, MHDC is not obligated under either its contract to purchase or its longterm lease. Moreover, as the trial court noted, MHDC as a corporation cannot be the victim of racial discrimination. It has no racial identity. It suffers no damage in its corporate capacity.

Also in point was the decision of the District Court for the Northern District of Ohio in *Cornelius* v. *City of Parma,* 374 F. Supp. 730 (N. D. Ohio 1974), 521 F. 2d 1401. In that case the Court held that low income black residents of the inner city had no right to challenge the conduct of an all-white suburb in refusing a building permit for a 236 development which would have had black residents. On March 8, 1976, this Court denied certiorari noting at 44 L. W. 3501:

> "Appeal from dismissal of complaint filed by lower income black residents of inner city challenging conduct of all-white suburb excluding subsidized lower income housing is, in accordance with Supreme Court order remanding case for further consideration in light of Warth v. Seldin, 422 U.S. 490, 43 L.W. 4906 (1975), remanded to district court with instructions to dismiss complaint."

The respondents' reliance on *Trafficante* v. *Metropolitan Life Insurance Co.,* 409 U. S. 205 (1972), is simply misplaced. *Trafficante* was distinguished in *Warth* because, as here, none of the non-minority plaintiffs made any allegations that they had suffered any justiciable, cognizable injury. In *Trafficante,* the plaintiffs were residents of housing facilities covered by the statute. They were held to have standing to be free from the adverse consequences to them of racially discriminatory practices in the facility directed at and immediately harmful to others. No party in this action alleged any such circumstances, nor was there any proof of any damage.

We respectfully suggest that not only has there been no violation of the Fourteenth Amendment, the Civil Rights Act or the Fair Housing Act by the conduct of the petitioners herein, but that these respondents have no standing to challenge the acts of the Village of Arlington Heights.

IV.

THE BRIEFS OF THE AMICI FAIL TO JUSTIFY THE DECISION OF THE COURT OF APPEALS.

Two amicus curiae briefs have been filed in this action, one by the American Society of Planning Officials, and the other by a number of organizations led by the League of Women Voters. Both briefs indicate not only a lack of knowledge of the record in this case, but a lack of understanding of what the trial court and the Court of Appeals actually held. Both go well outside the record and reflect a particular social policy rather than any attempt at legal analysis. Most of all, they also ascribe to the Village racial motivations and discriminatory practices which not even the Court of Appeals was willing to find.

The League of Women Voters' brief states that Arlington Heights has made no effort to alleviate the pattern of segregated housing in the metropolitan area. This statement comes with ill grace from the local League of Women Voters which has

actual knowledge of facts which are contrary to the allegations of this kind. We direct the Court's attention to facts which are well known to the League of Women Voters in Arlington Heights. The Village has taken the following official actions before and after the particular zoning controversy which is the subject matter of this cause:

1. It adopted a Fair Housing Ordinance in 1968, becoming one of the first communities in the northwest suburban area to do so.

2. It received approval for 119 units of low income housing for the elderly, presently administered through the Cook County Housing Authority, with construction expected to begin within the calendar year. The Cooperation Agreement with the Cook County Housing Authority was approved by the Village on April 20, 1970, before any action was taken on the Lincoln Green project.

3. The Village has empowered the Village Housing Commission to encourage private developers to include a percentage of low income units within proposed projects, as well as seeking availability of existing units for housing subsidies.

4. The Village officials adopted a housing assistance plan which seeks provision of 125 subsidized units (first year goal) and 375 units (three year goal) as part of the Village's application for entitlement funds under the Housing and Community Development Act of 1974.

These facts are public records and are clearly available for verification by any person sincerely interested in knowing the facts. Moreover, there has been a continuing movement of black, oriental and spanish-speaking families and individuals into the Arlington Heights community during recent years.

The Lincoln Green controversy was a zoning controversy, pure and simple. The briefs of the amici indicate clearly that they are not interested in the facts or law, but are simply concerned with unjustly tarring this Village.

Thus, the statement in the League of Women Voters' brief that Arlington Heights has made no effort to alleviate the

segregated housing pattern in the Chicago metropolitan area and in the Village simply is not true. The brief ignores the fact that both the trial and the Court of Appeals specifically found that the Zoning Ordinance has not been administered in a discriminatory manner. The holding of *Belle Terre* is that there is no fundamental constitutional right to housing and that a zoning ordinance is not measured by the compelling interest test.

The League further cites *Milliken* v. *Bradley*, 418 U. S. 717, but ignores the holding of that case which clearly indicates that racial imbalance in itself is not to be equated with a constitutional violation calling for a remedy, and that, absent a showing of discrimination by Arlington Heights in the administration of an ordinance clearly valid on its face, the Village does not have an affirmative duty to ignore its Zoning Ordinance because the Chicago area is allegedly segregated.

There is absolutely no evidence that the Zoning Ordinance of Arlington Heights has created or perpetuates a segregated community. The Village has not engaged in exclusionary zoning practices, nor was the refusal to alter a rational and valid zoning plan in this case anything but a reasonable exercise of the police power. The League's allegations of an attempt to attract industry but keep out workers flies in the face of deVise's testimony that Arlington Heights is a dormitory suburb and has less industry than any of the surrounding communities.

We have demonstrated above that there has been no violation of the Fair Housing Act of 1968 and the Civil Rights Acts. The League fails to cite any authority for requiring the Village of Arlington Heights to disavow its Zoning Ordinance simply because it is possible that some blacks might occupy Lincoln Green. We deny that the actions or inactions of the Village have contributed to the existence or perpetuation of segregated housing. The League and its fellow amici fail to cite any facts or law to support this unwarranted conclusion.

The housing pattern in Arlington Heights does not warrant the remedy sought by the respondents in this case. No constitutional rights have been impinged upon and no violations of any federal statute or the Fourteenth Amendment have been committed. The League speaks of "restrictive practices of Arlington Heights," but it fails to cite any specific restrictive practice because none exists. Again, though the League cites *Milliken,* it fails to set forth facts showing wherein the Village or Arlington Heights participated in or caused any wrong.

The brief of the American Society of Planning Officials, which was filed without authority of its Board of Directors, betrays a lack of knowledge of the facts and the record, as well as the law in this case. Most of the cases cited in the ASPO brief have been distinguished in the body of this brief. The case of *Sisters of Providence of St. Mary of the Woods* v. *Evanston,* 335 F. Supp. 396 (N. D. Ill. 1971) involved the sufficiency of the allegations of a complaint to withstand a motion to dismiss. We are not involved in a case of refusing to rezone for a black project under the same circumstances the Village would have granted a variance to an all-white project. The trial court and the Court of Appeals held that the Zoning Ordinance of Arlington Heights had been administered in a nondiscriminatory manner.

The amicus fails to recognize that the failure to grant the rezoning here has no effect on a racial minority. At best, a low income group generally, clearly not a suspect class, may have been deprived of the right to live in a high density development in the midst of a single-family district.

ASPO improperly cites the holding of this Court in *Palmer* v. *Thompson,* 403 U. S. 217 (1971) to the effect that the mere fact that a governmental act may have a greater impact upon the poor or a minority group does not thereby invalidate it. There is of course no evidence that the Lincoln Green project would have been occupied by a large percentage of minority

families. In fact, the majority of those eligible for the Lincoln Green housing were admittedly non-minority families.

ASPO like the respondents asserts that a compelling interest test should be applied to this zoning controversy, notwithstanding the fact that, as we have demonstrated above and in our original brief, the compelling interest test simply is not applicable to questions of this nature.

We are not involved here, as in *Lackawanna,* with refusing to accede to a reasonable rezoning request. What is at stake is a totally unreasonable request which would violate the well-established and sound zoning regulations upon which the community has relied. There is absolutely nothing in the record to indicate that Arlington Heights is "clearly a segregated community" because of the zoning pattern. There is no showing that the respondents' development would alleviate the purported segregated housing situation. The denial of rezoning clearly is not to be subjected to the compelling governmental interest test and as we have indicated above, the zoning action here is clearly not in violation of the Civil Rights Acts or the Fair Housing Act. Like the respondents, ASPO has failed to set forth any specific provision of the statute which it contends has been violated nor any specific act which falls within the prohibitions of the statute. The action of the Village does not have the effect of discriminating on the basis of race and it is not subject to strict scrutiny nor the compelling governmental interest criteria.

Unlike *Black Jack,* the respondents totally failed to establish a prima facie case by demonstrating a racially discriminatory effect. In fact, the trial court specifically found to the contrary. Unlike *Black Jack,* the evidence in this record clearly showed a devaluation of adjacent property values and a violation of the integrity of the Zoning Ordinance.

ASPO repeatedly asserts that the compelling interest test is to be applied and insists that the interests put forth by the

Village were not sufficient. This constant reversion to the compelling interest test simply reflects the failure on the part of the amicus to understand what this Court has repeatedly said, *i.e.*, that there is no fundamental constitutional right of access to any particular kind of housing, and therefore the compelling interest test does not apply.

This case of course does not involve a "holding zone." It involves a single-family district which is part of the well-established area in which it finds itself. The single-family classification is a realistic one, totally in keeping with the established land uses in the area. Although ASPO believes that the buffer plan had not been applied consistently, the trial court after hearing the evidence held otherwise. The nature of the project here is high density, ranging between 12 and 15 units to the acre, more than three times the established density in the area. ASPO cites two dissenting members of the Plan Commission and ignores the majority of the Plan Commission and the six members of the Village Board who in fact found that this high density multiple-family development was spot zoning and totally inconsistent with the surrounding area.

ASPO's conclusion that this proposal would not so seriously disrupt the character of the area as to destroy the integrity of the comprehensive zoning plan simply indicates an ignorance not only of the specific facts of this case as revealed by the evidence, but betrays an abysmal ignorance of basic city planning principles.

ASPO is quick to say that the neighboring property owners are not entitled to the protection of the Zoning Ordinance and should be prepared to accept a five to ten per cent decrease in their values simply because, in ASPO's judgment, the preservation of the property rights is not a compelling interest. The design and layout of the project does not insure that an adverse impact will be minimized. In fact, the evidence shows just the contrary. The evidence in this record is clear that the racial character of future inhabitants of Lincoln Green had nothing

to do with the detrimental effect that a multiple-family development would have on the surrounding area. We are not talking about a "premium" as justifying racial discrimination or perpetuation of segregated housing. Instead, we are talking about the entire purpose of zoning and planning—the purpose of insuring compatible development from a land use standpoint and the preservation of property values.

Contrary to the assertion of ASPO, this case is not concerned with racial discrimination. We are concerned with a development proposal that is in clear contradiction to an established and consistently followed policy of a community's comprehensive plan. What purports to be a brief filed on behalf of professional planners, on analysis turns out to be nothing but an ill-conceived polemic tract, by a misguided and totally uninformed group who know not whereof they speak.

CONCLUSION.

Based on the foregoing and on the matters suggested in our original brief, we respectfully suggest that the Court of Appeals for the Seventh Circuit erred in its decision and judgment. We respectfully pray that the judgment of the Court of Appeals be reversed and the decision of the trial court affirmed.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

MOTION FILED
MAR 5 1976

No. 75-616

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

MOTION OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

And

BRIEF OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. AS AMICUS CURIAE.

Of Counsel:
ABE FORTAS
1200 29th St., N.W.
Washington, D. C. 20007
202/337-5700

FRIEDMAN & KOVEN
208 S. LaSalle Street
Chicago, Illinois 60604
312/346-8500

ROBERT S. JACOBS
STEPHEN C. SHAMBERG
DANA H. FREYER
Attorneys for Amici.

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

TABLE OF CONTENTS

PAGE

Motion of the Leagues of Women Voters of the United States, Illinois, Cook County, and Arlington Heights-Mt. Prospect Area, the American Jewish Committee, the Arlington Heights Clergy Fellowship and the Minority Industrial Relations Council, Inc. for Leave to File Brief as Amicus Curiae A1

Brief of the Leagues of Women Voters of the United States, Illinois, Cook County, and Arlington Heights-Mt. Prospect Area, the American Jewish Committee, the Arlington Heights Clergy Fellowship and the Minority Industrial Relations Council, Inc. as Amicus Curiae 1

Preliminary Statement 2

Argument 4

I. The Petitioner's Zoning Ordinance Was Applied to Perpetuate Local and Area-Wide Segregated Housing, Depriving Citizens of Equal Protection of the Law 4

II. The Problem of Racial Residential Segregation Pervades Metropolitan Areas 7

III. Petitioner's Denial of the Rezoning Request Contravenes National Housing Policy, the Fair Housing Act of 1968 and Civil Rights Acts 8

IV. The Pattern of Segregated Housing in Arlington Heights Warrants the Remedy Sought By Respondents 10

Conclusion 13

INDEX OF CITATIONS

Cases

PAGE

Barrick Realty, Incorporated v. *City of Gary, Indiana,* 491 F.2d 161 (7th Cir. 1974) 9

City of Hartford v. *Hills,* Civil No. H-75-258 (D.Conn. Jan. 28, 1976) 10

Clark v. *Universal Builders, Inc.,* 501 F.2d 324 (7th Cir. 1974), *cert. denied,* 419 U.S. 1070 (1974) 4, 9

Dailey v. *City of Lawton, Oklahoma,* 425 F.2d 1037 (10th Cir. 1970) 7

Gatreaux v. *Chicago Housing Authority,* 503 F.2d 930 (7th Cir. 1974), *cert. granted sub. nom. Hills* v. *Gatreaux,* 421 U.S. 962 (1975) 4

Griggs v. *Duke Power Co.,* 401 U.S. 424 (1971) 9

Jones v. *Mayer Company,* 392 U.S. 409 (1968) 9

Kennedy Park Homes Assn. v. *Lackawanna,* 436 F.2d 108 (2nd Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971) 7, 9

McDonnell Douglas Corp. v. *Green,* 411 U.S. 792 (1973) 7

Milliken v. *Bradley,* 418 U.S. 717 (1974) 6, 10, 11

So. Burlington Cty. N.A.A.C.P. v. *Tp. of Mt. Laurel,* 67 N.J. 151, 336 A.2d 713 (1975) 10

Trafficante v. *Metropolitan Life Insurance Company,* 409 U.S. 205 (1972) 9

United States v. *City of Black Jack, Missouri,* 508 F.2d 1179 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975) 5, 7, 9

PAGE

Village of Belle Terre v. *Boraas,* 416 U.S. 1 (1974) 6, 10

Williams v. *The Matthews Company,* 499 F.2d 819 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021 (1974), *cert. denied,* 419 U.S. 1027 (1974) 8

Statutes

Civil Rights Act of 1866, 42 U.S.C. §§1982, 1987 *et seq.* 3, 9

Civil Rights Act of 1964, 42 U.S.C. §2000a *et seq.* 9

Fair Housing Act of 1968, 42 U.S.C. §3601 *et seq.* 3, 9

Housing and Community Development Act of 1974, 42 U.S.C. §5301 *et seq.* 10

42 U.S.C. 5304 10

HUD Regulations

24 C.F.R. 570.303(c) 10

Constitution

U.S. CONST. amend. XIII 7, 8

U.S. CONST. amend. XIV 6, 7, 8, 11, 12

Miscellaneous

NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, THE IMPACT OF HOUSING ON JOB OPPORTUNITIES (1968) 5

NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, DIVISION OF STATE AND REGIONAL PLANNING, LAND USE REGULATION, THE RESIDENTIAL LAND SUPPLY (April 1972) 8

PAGE

Orshansky, *The Poor in City and Suburbs, 1964*, 29 SOCIAL SECURITY BULL., Dec. 1966 ..... 5, 7

PRESIDENT'S COMMITTEE ON URBAN HOUSING, A DECENT HOME (1968) 8

REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (1968) 8

U.S. COMMISSION ON CIVIL RIGHTS, EQUAL OPPORTUNITY IN SUBURBIA (1974) 8

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

MOTION OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

NOW COME the Leagues of Women Voters of the United States, Illinois, Cook County and Arlington Heights-Mt. Prospect Area, the American Jewish Committee, the Arlington Heights Clergy Fellowship, and the Minority Industrial Relations Council, Inc., by their undersigned attorneys, and respectfully apply for leave to file a brief as *amicus curiae* in the above-captioned case pursuant to Rule 42(3), and in support of their application state:

1. *Amici* pursue and support programs aimed at insuring equal opportunity for all Americans. They are deeply concerned with the rapid growth of residential segregation, particularly in suburban areas, and the resulting denial of employment and other opportunities in these areas to minorities, including blacks and Spanish-speaking persons.

2. The League of Women Voters of the United States ("League"), incorporated under the laws of the District of Columbia in 1920 and with a current membership of approximately 140,000, has since that time promoted political responsibility through informed and active participation of citizens in government. The League's studies on the impact of inequality of opportunity in employment, education and housing in the United States establish that in the field of housing, exclusionary zoning and other restrictive practices against low- and moderate-income citizens have their greatest impact on black and Spanish-speaking minorities. The League has concluded that such residential segregation is one of the primary causes of lack of opportunity in the critical areas of employment and education. It is committed to a policy aimed at eradicating exclusionary zoning and other restrictive practices which serve to deny citizens of low and moderate income equal access to the suburban housing and employment market.

3. The Leagues of Women Voters of Illinois, Cook County and Arlington Heights-Mt. Prospect Area are, respectively, an affiliate of the League of Women Voters of the United States (with approximately 9,000 members in 81 local chapters throughout Illinois), an interleague organization consisting of 30 local leagues serving 43 municipalities, and the local league directly involved in the Arlington Heights area.

The Illinois League has adopted a position advocating revision of zoning laws, when necessary, to accommodate the development of low- and moderate-income housing. The Cook County League is concerned with the marked trend toward a poor black inner city ringed by white, middle class suburbs. The Arlington Heights-Mt. Prospect League, recognizing the great extent to which suburban zoning practices and segregated housing in both the City of Chicago and Arlington Heights have resulted in the denial to racial minorities of equal access to expanding employment opportunities in the Arlington Heights area, has been a moving force behind and continues to be an active supporter of the housing project which is the subject of this appeal.

4. The American Jewish Committee ("AJC"), a national organization of approximately 40,000 members, founded in 1906 for the purpose of protecting the civil and religious rights of Jews, believes that helping to preserve the security and the constitutional rights of all Americans, irrespective of race, creed, national origin, social or economic background will best protect the security and the constitutional rights of American Jews. For this reason, the AJC has for many years vigorously supported the extension of equal housing and employment opportunities to all individuals. The AJC views restrictive zoning practices

as preventing low and moderate income persons, in general, and minority residents of the inner cities, in particular, from living in those suburban areas in and around which today's expanding job opportunities are increasingly found.

5. The Arlington Heights Clergy Fellowship is an interdenominational association of ministers with congregations in Arlington Heights. Its members believe that restrictive zoning practices, such as are involved in this case, ought to be prohibited because they perpetuate the discriminatory denial to minorities and other low- and moderate-income persons who work, or may desire to work, in or near Arlington Heights, of the opportunity to live there.

6. The Minority Industrial Relations Council, Inc. ("MIRC") is a consortium of twenty-nine suburban companies (some located in Arlington Heights) that have organized to improve economic opportunities for blacks and other minorities in Chicago's suburbs. Federal law requires the member companies of MIRC to recruit and hire blacks and other minority group members. Because of the lack of low- and moderate-income housing in Arlington Heights and other suburbs, these companies experience great difficulty in meeting their affirmative action hiring goals. MIRC supports efforts to remove the barriers which prevent poor and minority people from living in Arlington Heights and other suburban communities.

7. *Amici* believe that an *amicus* brief on their behalf will help to demonstrate the relationship between the issues in this case and the nationwide problem of metropolitan area housing segregation. Because of studies conducted during the past decade, *amici* are familiar with the causal relationship between suburban exclusionary zoning practices and metropolitan area residential patterns. The

result is that poor black and other racial minority members are locked into inner city ghettos while both employers and whites pass readily through open doors into suburbia. As a result of their combined national and local viewpoints, the *amici* can discuss for the Court the extent to which the action involved herein is typical of the perpetuation by municipalities of racial segregation in metropolitan areas through the exercise of local zoning powers.

8. The undersigned attorneys requested the written consent of the parties in this litigation to file a brief as *amicus curiae,* and such consent was refused by counsel for the Petitioner, the Village of Arlington Heights.

9. Forty printed copies of the proposed brief of the *amici* are being lodged with the Clerk contemporaneously with this motion.

Respectfully submitted,

ROBERT S. JACOBS
STEPHEN C. SHAMBERG
DANA H. FREYER
Attorneys for Amici.

Of Counsel:
ABE FORTAS
1200 29th St., N.W.
Washington, D. C. 20007
202/337-5700

FRIEDMAN & KOVEN
208 S. LaSalle Street
Chicago, Illinois 60604
312/346-8500

March 5, 1976.

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

vs.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

BRIEF OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. AS AMICUS CURIAE.

MAY IT PLEASE THE COURT:

PRELIMINARY STATEMENT

The Leagues of Women Voters of the United States, Illinois, Cook County and Arlington Heights-Mt. Prospect Area, The American Jewish Committee, The Arlington Heights Clergy Fellowship and The Minority Industrial Relations Council, Inc. respectfully submit this brief *amicus curiae*. Their interest is set forth in their motion for leave to file this brief, which is incorporated herein by reference.

The refusal of the Village of Arlington Heights to grant the request of the Metropolitan Housing Development Corporation for rezoning was an unconstitutional application of the Village's zoning ordinance when viewed against the historical pattern of residential segregation in Arlington Heights and in the metropolitan Chicago area and the failure of the Village of Arlington Heights to take any action to ameliorate this condition.

Arlington Heights' zoning ordinance, as administered, perpetuates the practice of preventing racial minorities from residing in Arlington Heights, and by so doing it further tightens the vise around inner-city minorities. It operates to exclude these low- and moderate-income minority persons from housing, employment and other opportunities on the same basis as white suburban residents and thereby deprives minority residents of their right to equal protection of the law.

Arlington Heights' action is also typical of the critical national problem of metropolitan area-wide racial housing segregation created and perpetuated, in large part, by restrictive practices of suburban municipalities. These

practices further exacerbate the national school integration crisis, by maintaining residential separation of races.

The action of the Village of Arlington Heights, affecting the interstate metropolitan Chicago area, also violates national policy against racially restrictive practices in housing, expressed by Congress in the Civil Rights Act of 1866 and the Fair Housing Act of 1968. Specifically, the application of the Arlington Heights zoning ordinance prevents, in an interstate metropolis, utilization of a federal program for subsidized housing designed to implement this national policy. The Constitution and the congressional policy should not be thwarted by efforts of suburban communities which are an integral part of a metropolitan area to erect and maintain white picket fences around themselves, thereby violating the constitutional rights of other citizens.

ARGUMENT

I.

The Petitioner's Zoning Ordinance Was Applied to Perpetuate Local and Area-Wide Segregated Housing, Depriving Citizens of Equal Protection of the Law.

The metropolitan Chicago area consists of some seven million people, extending beyond artificial state, county and municipal boundary lines, from southern Wisconsin, through northeastern Illinois, into northern Indiana. The heart of the area is the inner city of Chicago, but the rings of communities surrounding it are equally a part of one large urban entity. What in the past may have been a number of independent communities, economically self-sufficient and physically separated by green belts, has become today one megapolis, one large community, melded together, extending mile after mile, with no visible separation of technically independent governmental units. However, in Chicago and elsewhere across the nation, the urban areas have become marred by the blight of racial segregation.

It is indisputable that the metropolitan Chicago area as a whole is racially segregated. Lower federal courts have taken judicial notice of such segregation. *Gautreaux* v. *Chicago Housing Authority,* 503 F.2d 930, 937 (7th Cir. 1974), *cert. granted sub. nom. Hills* v. *Gautreaux,* 421 U.S. 962 (1975); *Clark* v. *Universal Builders, Inc.,* 501 F.2d 324, 334-35 (7th Cir. 1974), *cert. denied,* 419 U.S. 1070 (1974). Within the area, the Village of Arlington Heights is one of the most segregated suburban communities. Of its 64,000 residents in 1970, only twenty-seven were black. Between 1960 and 1970, the black population of the four-township area of which Arlington Heights is a part increased by 170 persons, while the area's white population had an explosive increase of 219,000 people.

Nor is this a static picture of racial segregation, limited to Arlington Heights; rather, the accelerating segregation of Arlington Heights and similar satellite communities of Chicago is producing increased segregation in the core city, Chicago, itself. The percentage of city inhabitants who are members of racial minorities is steadily increasing, while such minorities' proportionate representation in suburban communities is, with few exceptions, decreasing. (Tr. 533-34).

Chicago, along with other great urban centers, has fallen victim to an inexorable process whereby it has taken "the racial shape of a donut with the Negroes in the hole and mostly Whites occupying the ring", *quoted in, United States* v. *City of Black Jack, Missouri,* 508 F.2d 1179, 1186 (8th Cir. 1974), *cert. denied,* 422 U.S. 1042 (1975).

This residential phenomenon is accompanied by a corresponding ghettoization of employment opportunities, of which segregated housing is both cause and effect. Thus white residents fleeing from cities to suburbs are joined by the actual and prospective employers of the racial minorities left behind.* This case offers dramatic evidence of such shift in employment opportunities: between 1960 and 1970, the City of Chicago lost 230,000 jobs, while the number of jobs in the Arlington Heights area doubled from 100,000 to 200,000 (Tr. 574). This loss of jobs, combined with dramatically high unemployment rates for inner-city minority residents, creates a dangerous mixture which leads to violence: motivation created by the despair of pov-

* Orshansky, *The Poor in City and Suburbs, 1964,* 29 SOCIAL SECURITY BULL., Dec. 1966, at 29; NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, THE IMPACT OF HOUSING ON JOB OPPORTUNITIES 24-26 (1968).

erty, and rationalization created by loss of constitutional rights. Along with housing and employment ghettos, this pattern produces accelerated segregation in the schools.

In this context of a pattern of segregated housing in the metropolitan Chicago area and in Arlington Heights, and where Arlington Heights has made no effort to alleviate the situation, the use by Arlington Heights of its zoning ordinance to prevent the construction of subsidized, integrated housing such as Lincoln Green, discriminated unlawfully against racial minorities. Thus, the present case is not governed by *Village of Belle Terre* v. *Boraas,* 416 U.S. 1 (1974). *Belle Terre* did not present an issue of zoning restrictions adopted or administered with the obvious and foreseeable effect of excluding blacks and other minorities from white suburbs and confining them to a black city. Nothing in *Belle Terre* demonstrated a pattern of discrimination in which minorities are excluded from a suburb with the result that they are confined to the major city of which the suburbs are satellites and are excluded from employment opportunities in the suburb itself.

The Court found in *Milliken* v. *Bradley,* 418 U.S. 717 (1974), that governmental action having the "natural, probable, foreseeable and actual effect" of creating and perpetuating school discrimination within Detroit constituted a sufficient predicate for violation of the Equal Protection Clause. 418 U.S. at 725-26. So here, the obvious and foreseeable effect of the Arlington Heights zoning ordinance has been to create and perpetuate a segregated community in which black and other minority persons have been unable to live and work, and where they have been denied the opportunity of attending local, integrated public schools. This is a violation of the Equal Protection Clause of the Fourteenth Amendment. It is also, unfortunately, not unique to Arlington Heights.

II.

The Problem of Racial Residential Segregation Pervades Metropolitan Areas.

Our nation has been constitutionally committed to equality of opportunity for two centuries and to elimination of racial discrimination for more than one century. These goals, promised by the Thirteenth and Fourteenth Amendments, have been largely illusory. They will remain an illusion unless positive steps are taken to eradicate those conditions caused by governmental action or inaction which prevent the full admission of racial minorities into our historically white-dominated society. Among these objectionable conditions are both racially segregated housing and accompanying racially segregated employment condition throughout the country. *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 800 (1973); *United States* v. *City of Black Jack, Missouri, supra* at 1186. Both of these conditions are present in this case.

Despite the existence of legislation generally condemning housing discrimination, our nation's urban centers have become more and more heavily populated by black and other minority residents, while they are surrounded by a growing ring of white suburbs. See *United States* v. *City of Black Jack, Missouri, supra.*

Low income minorities are forced to remain in inner city ghettos because man-made barriers block their entrance into white suburban neighborhoods. Exclusionary zoning practices utilized by suburban municipalities are among the most formidable and impregnable of such barriers. See *Kennedy Park Homes Assn.* v. *Lackawanna,* 436 F.2d 108 (2d Cir. 1970), *cert. denied,* 401 U.S. 1010 (1971); *Dailey* v. *City of Lawton, Oklahoma,* 425 F.2d 1037 (10th Cir. 1970); Orshansky, *supra* at 22, 26, 30. Their clear effect and their purpose, except in rare situations, is to erect a barrier against racial minorities, by raising

artificially the cost of suburban housing to levels beyond the reach of the low-income inner-city dwellers, a proven disproportionate percentage of whom are members of racial minorities.* Developing municipalities eagerly seek industries and then just as eagerly seek to exclude racial minorities from employment in those industries. They do this by rendering it impossible for lower paid employees of these industries to live in the community where such employees work.** This result is constitutionally proscribed: it is state action which discriminates in housing and employment opportunities on the basis of race.

III.

Petitioner's Denial of the Rezoning Request Contravenes National Housing Policy, the Fair Housing Act of 1968 and Civil Rights Acts.

Pursuant to its mandate under the Thirteenth and Fourteenth Amendments to the Constitution, Congress has enacted legislation aimed at prohibiting both subtle and obvious forms of discrimination in employment and housing. *Williams* v. *The Matthews Company,* 499 F.2d 819, 826 (8th Cir. 1974), *cert. denied,* 419 U.S. 1021 (1974), *cert. denied,* 419 U.S. 1027 (1974). The goal of the

---

* *See* NEW JERSEY DEPARTMENT OF COMMUNITY AFFAIRS, DIVISION OF STATE AND REGIONAL PLANNING, *LAND USE REGULATION, THE RESIDENTIAL LAND SUPPLY* (April 1972) (a study assembling and examining the nature and extent of municipal zoning practices in 16 New Jersey counties as affecting residential land available for low and moderate income housing).

** PRESIDENT'S COMMITTEE ON URBAN HOUSING, *A DECENT HOME* 47-48 (1968) ("Kaiser Commission Report"); U.S. COMMISSION ON CIVIL RIGHTS, *EQUAL OPPORTUNITY IN SUBURBIA* 6-7 (1974); *see also, REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 13 (1968) ("Kerner Commission Report").

Fair Housing Act of 1968 (Title VIII of the Civil Rights Act, 82 Stat. 81, 42 U.S.C. §§ 3601 *et seq.*), and of our national housing policy generally is "to replace the ghettos 'by truly integrated and balanced living patterns'" for persons of all races. *Trafficante* v. *Metropolitan Life Insurance Company,* 409 U.S. 205, 211 (1972); *Clark* v. *Universal Builders, Inc., supra,* at 331 n. 4; *Barrick Realty, Incorporated* v. *City of Gary, Indiana,* 491 F.2d 161, 164 (7th Cir. 1974). This legislation reflects our nation's century-long commitment to the elimination of discrimination in housing. (42 U.S.C. § 1982).

This Court has called for an expansive reading of the Civil Rights Acts of 1866 and 1964 and the Fair Housing Act of 1968 in order to assist Congress in its goal of eliminating segregation and discrimination. *Trafficante* v. *Metropolitan Life Insurance Company, supra* at 209; *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 429-30 (1971); *Jones* v. *Mayer Company,* 392 U.S. 409, 437 (1968). Lower courts have followed this principle. *United States* v. *City of Black Jack, Mo., supra,* at 1184.

In shaping these and more recent housing laws, Congress was responding affirmatively to the need to *undo* existing patterns of racial segregation in housing. Federal housing laws were therefore designed to afford disadvantaged minorities equal access to housing opportunities, and these laws have properly been interpreted to prohibit governmental as well as private interference with the housing market's creation and distribution of desegregated housing opportunities to minorities. *United States* v. *City of Black Jack, Mo., supra* at 1183-84; *Kennedy Park Homes Assn.* v. *City of Lackawanna, supra* at 112-14. Indeed, municipalities desiring to receive federal community development funds now have the obligation to plan and provide an opportunity for the private develop-

ment of low- and moderate-income housing within their boundaries for both their own residents and persons who can be expected to reside there. 42 U.S.C. § 5304; 24 C.F.R. 570.303(c); *City of Hartford* v. *Hills,* Civil No. H-75-258 (D. Conn. Jan. 28, 1976).

These remedial laws impose upon governmental bodies whose actions or inactions have contributed to the existence and perpetuation of segregated housing, the obligation not to obstruct efforts to create integrated housing opportunities in metropolitan areas. The Village of Arlington Heights has failed to meet its obligation.

IV.

The Pattern of Segregated Housing in Arlington Heights Warrants the Remedy Sought by Respondents.

Two fundamental conditions have come together in this case: the massive interstate urban area involved (metropolitan Chicago) and the pervasive nature of the housing discrimination existing in metropolitan Chicago, in which the Village of Arlington Heights has participated. As a result, the supremacy of the traditionally local function of zoning, which can be justified when it does not interfere with constitutional rights of citizens, must give way when its exercise does impair constitutional rights. See *Village of Belle Terre* v. *Boraas, supra; So. Burlington Cty. N.A.A.C.P.* v. *Tp. of Mt. Laurel,* 67 N.J. 151, 336 A.2d 713 (1975).

This Court recognized the primacy of constitutionally guaranteed rights over local action which interferes with such rights in *Milliken* v. *Bradley, supra,* the school segregation case involving the City of Detroit. The teaching of *Milliken* is that "no state law is above the Constitution.

School district lines and the present laws with respect to local control, are not sacrosanct and if they conflict with the Fourteenth Amendment federal courts have a duty to prescribe appropriate remedies." 418 U.S. at 744. "The controlling principle consistently expounded in our holdings is that the scope of the remedy is determined by the nature and extent of the constitutional violation." 418 U.S. at 744.

While this Court found no inter-district segregation in *Milliken,* it anticipated one of the significant aspects of the present case: the effect of the present zoning law is unconstitutional not only in its impact in Arlington Heights itself, but also in its impact on the urban area of Chicago of which Arlington Heights is a part. The restrictive practices of Arlington Heights and similar suburbs consign Chicago to becoming progressively a ghetto area for black and minorities. The whites flee to the suburbs and build an effective wall which serves to exclude minorities from their own community and to confine them to the City of Chicago. Government action by Arlington Heights has deprived citizens of their constitutional rights.

In *Milliken* this Court stated:

> "Before the boundaries of separate and autonomous school districts may be set aside by consolidating the separate units for remedial purposes or by imposing a cross-district remedy, it must first be shown that there has been a constitutional violation within one district that produces a significant segregative effect in another district." 418 U.S. at 744-45.

It follows that a remedy must be fashioned to eliminate inter-district wrongs where the district to be affected by the remedy participated in or caused the wrong. In this

case, however, the remedy sought is not an "inter-district" remedy, although such a remedy would be appropriate if required; the remedy sought here is applicable only to one of the participants in the area-wide wrong of segregated housing.

The Court of Appeals was correct in holding that Arlington Heights' rejection of the Lincoln Green proposal had a racially discriminatory effect and, being without compelling justification, violated plaintiffs' right to equal protection of the law guaranteed by the Fourteenth Amendment. To sanction the challenged action would be to provide every suburban municipality an opportunity to escape from its statutory and constitutional obligation to refrain from conduct that interferes with private efforts to construct integrated low- and moderate-income housing and would nullify federal programs designed to implement this national policy.

The effect of such action by suburban municipalities is to perpetuate residential segregation and the continued denial to racial minorities of their right to equal access to housing and employment opportunities guaranteed by the Equal Protection Clause. The sought-for answer to the problem of integrated public schooling which has repeatedly been before this Court, and has been the source of deep national controversy and division, may ultimately be found by attacking its root cause: segregated patterns of residential housing.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the decision of the Court of Appeals be affirmed.

Respectfully submitted,

ROBERT S. JACOBS
STEPHEN C. SHAMBERG
DANA H. FREYER
Attorneys for Amici.

Of Counsel:
ABE FORTAS
1200 29th St., N.W.
Washington, D. C. 20007
202/337-5700

FRIEDMAN & KOVEN
208 S. LaSalle Street
Chicago, Illinois 60604
312/346-8500

March 5, 1976.

Supreme Court, U. S.
FILED
MAR 18 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF THE LEAGUES OF WOMEN VOTERS OF THE UNITED STATES, ILLINOIS, COOK COUNTY, AND ARLINGTON HEIGHTS-MT. PROSPECT AREA, THE AMERICAN JEWISH COMMITTEE, THE ARLINGTON HEIGHTS CLERGY FELLOWSHIP AND THE MINORITY INDUSTRIAL RELATIONS COUNCIL, INC. FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Now comes the Village of Arlington Heights, et al., petitioners herein, by Jack M. Siegel, their attorney, and, pursuant to Rule 42(3) of the United States Supreme Court, object to

the motion of the Leagues of Women Voters of the United States, Illinois, Cook County, and Arlington Heights-Mt. Prospect Area, the American Jewish Committee, the Arlington Heights Clergy Fellowship and the Minority Industrial Relations Council, Inc. for leave to file brief as amicus curiae. In support of said objections, petitioners say as follows:

1. That the motion fails to concisely state the nature of the applicants' interest, but instead merely contains general statements as to the nature of the activities of the applicants, and fails to set forth any justiciable interest in the subject matter of this cause or the issues raised.

2. That said motion fails to set forth facts or questions of law that have not been presented by the parties or reasons for believing that they will not be adequately presented by the parties. That, in fact, the respondents herein have heretofore filed a brief in excess of 50 pages which comprehensively raises and briefs all the questions involved in this cause.

3. That the motion fails to set forth any questions of law or fact which are relevant to the disposition of the case which have not been raised in the briefs heretofore filed with this Court.

4. That none of the applicants herein sought to intervene or participate in the trial below in the District Court for the Northern District of Illinois or in the proceedings before the Court of Appeals for the Seventh Circuit. That the general allegations of the motion are insufficient to show the interest of the applicants or the necessity of their filing a brief as amicus curiae in order to fully advise and inform the Court as to the issues in this cause.

5. That the petitioners herein have heretofore withheld consent for the filing of said brief for the reason that the necessity of answering the brief as amicus curiae would impose an unreasonable and unnecessary burden upon these petitioners, without any additional aid to this Court in determining the issues before it.

6. That the motion of the applicants fails to set forth facts showing wherein the membership of the various organizations has in fact consented to said motion or the filing of said brief, and the applicants never sought or allowed the petitioners to present their point of view to the applicants prior to the determination by the applicants to seek to file a brief herein.

WHEREFORE, the petitioners respectfully object to the filing of said brief as amicus curiae and respectfully request that said motion be denied.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

MOTION FILED

MAR 6 1976

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al., *Respondents,*

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, et al., *Petitioners,*

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO, *Intervening Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

and

BRIEF OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS AS *AMICUS CURIAE*

Conrad N. Bagne
1313 E. 60th St.
Chicago, IL 60637
312-947-2071
Attorney for Amicus Curiae

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, et al.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO,
Intervening Respondents

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

MOTION OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS FOR LEAVE TO FILE A BRIEF AS *AMICUS CURIAE*

COMES NOW THE AMERICAN SOCIETY OF PLANNING OFFICIALS by its undersigned attorney, and respectfully moves for leave to file the attached brief as *Amicus Curiae* in the above encaptioned case pursuant to Rule 42(3) of the Rules of the Supreme Court of the United States. In support of this application, it states:

1. The consent of the attorneys for the respondents has been obtained. The consent of the attorney for the petitioners was requested but refused.

2. The American Society of Planning Officials (ASPO) is a national membership association serving governmental planning agencies and local municipal officials. As such, it has studied the problems of planning and land use decision making for over four decades. ASPO provides technical assistance and does research on urban planning and local growth management systems. A very significant part of this area of concern and expertise pertains to the development of adequate housing opportunities for all citizens in this country. ASPO works to ensure that the comprehensive planning process encompasses rather than frustrates this concern with adequate housing opportunities.

3. This case presents a conflict between the strong tradition of local land use planning in this country and efforts to foster development of integrated and dispersed low income housing. It is the purpose of this brief by *Amicus* to show that local comprehensive planning, the rights of racial minorities, and the open housing laws of this country can function together. The opposition to desegrated housing opportunities is often shrouded in concerns for local decision making and the integrity of the comprehensive planning process. At the same time, advocates of dispersed housing opportunities for racial minorities and elimination of segregated housing patterns may denigrate the importance of local comprehensive planning. As one of the major urban planning spokesman in this country concerned with equal housing opportunities, ASPO is in an unique

position to proffer a balanced perspective of the issues presented by this case. The brief of *Amicus* will assist the court in fully understanding the context of the governmental decision making process in this case, and the rights of the various parties involved.

Respectfully submitted,

Conrad N. Bagne, *Attorney for Amicus*
1313 E. 60th St.
Chicago, IL 60637
312-947-2071

TABLE OF CONTENTS

Page

Table of Authorities vi

Interest of *Amicus Curiae* 1

Summary of Argument 2

Argument 4

I. The failure of the village to grant the rezoning requested by the respondent must be examined in terms of its effect upon racial minorities, not in terms of its purpose or intent 4

II. A rezoning denial which serves to perpetuate a racially segregated housing pattern in face of private efforts to alleviate that pattern has a racially discriminatory effect under equal protection of the laws of the Fourteenth Amendment 10

III. A rezoning denial which serves to perpetuate a racially segregated housing pattern in face of private efforts to alleviate that pattern has a racially discriminatory effect under the 1866 Civil Rights Act and the 1968 Fair Housing Act 14

IV. Local zoning action which has discriminatory racial effects under the Equal Protection Clause of the Fourteenth Amendment, the 1866 Civil Rights Act, or the 1968 Fair Housing Act must be justified by some compelling govern-

mental interest 15

V. The interests put forth by the village herein were not sufficiently compelling to justify the denial of the rezoning to the respondents 17

Conclusion 23

TABLE OF AUTHORITIES

Cases

Acevedo v. Nassau County, 500 F.2d 1078 (2nd Cir. 1974) 13

Buchanan v. Warley, 245 U.S. 60 (1917) 3

Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961) 6

Church of God of Louisiana, Inc. v. Monroe-Ouachita Regional Planning Commission, 404 F.Supp. 175 (W.D. La. 1975) 22

Citizens Committee for Faraday Wood v. Lindsay, 507 F.2d 1065 (2nd Cir. 1974) *cert. denied* 428 U.S. 948 (1975) 13

City of Fairfield v. Superior Court of Salano County, 14 Cal.3d 768, 537 P.2d 375 (1975) 4

Clark v. Universal Builders, 501 F.2d 324 (7th Cir. 1974) *cert. denied* 419 U.S. 1070 (1974) 13

Crow v. Brown, 457 F.2d 788 (5th Cir. 1972) *aff'g* 332 F.Supp. 382 (N.D. Ga. 1971) 9

Dailey v. City of Lawton, 425 F.2d 1037 (10th Cir. 1970) *aff'g* 296 F.Supp. 266 (W.D. Okl. 1969) 8

Dunn v. Blumstein, 405 U.S. 330 (1972) 15

Fritts v. City of Ashland, 348 S.W.2d 712 (Ky. 1961) 18

Gaston County v. U.S., 395 U.S. 285 (1969) 11

Gomillion v. Lightfoot, 364 U.S. 339 (1960) 5

Griffin v. County School Board of Prince Edward County, 377 U.S. 218 (1964) 5

Griggs v. Duke Power Co., 401 U.S. 424 (1971) 11

Hawkins v. Town of Shaw, 461 F.2d 1171 (5th Cir. *en banc* 1972) *aff'g* 437 F.2d 1286 (5th Cir. 1971) *rev'g* 303 F.Supp. 1162 (N.D. Miss. 1969) .10

Hobson v. Hansen, 269 F.Supp. 401 (D.D.C. 1967) *aff'd sub nom.* Smuck V. Hobson, 408 F.2d 175 (D.C. Cir. 1969) 6

James V. Valtierra, 402 U.S. 137 (1971) 13

Jones v. Alfred H. Meyer Co., 392 U.S. 409 (1968) 14

Kennedy Park Homes Association v. City of Lackawana, 436 F.2d 108 (2nd Cir. 1970) *cert. denied* 401 U.S. 1010 (1971) 9, 13, 15

Keyes v. School No. 1, Denver, Colorado, 413 U.S. 189 (1973) 11, 12

Loving v. Virginia, 388 U.S. 1 (1967) 15

Mahaley v. Cuyahoga Metropolitan Housing Authority, 500 F.2d 1087 (6th Cir. 1974) 11

McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) 11

McLauglin v. Florida, 379 U.S. 184 (1964) 15

Nectow v. City of Cambridge, 277 U.S. 183 (1928) 23, 24

Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920 (2nd Cir. 1968) *rev'g* 42 F.R.D. 617 (D.Conn. 1967) 5

Palmer v. Thompson, 403 U.S. 217 (1971) 5, 10, 11, 13

Shapiro v. Thompson, 394 U.S. 618 (1969) 15

Sisters of Providence of St. Mary of the Woods v. City of Evanston, 335 F.Supp. 396 (N.D. Ill. 1971) 9

Skilken & Co. v. Toledo, Nos. 74-2116 and 74-2320 (6th Cir. filed December 10, 1975) *rev'g* 380 F.Supp. 228 (N.D. Ohio 1974) 11, 21

Trafficante v. Metropolitan Life Insurance Co., 409 U.S. 205 (1972) 14

United Farmworkers of Florida Housing Project, Inc. v. City of Delray Beach, 493 F.2d 799 (5th Cir. 1974) 9, 22

United States v. City of Black Jack, 508 F.2d 1179 (8th Cir. 1974) 15

United States v. O'Brien, 391 U.S. 367 (1968) 5

United States v. Real Estate Development Corp., 347 F.Supp. 766 (N.D. Miss. 1972) 11

Village of Belle Terre v. Boraas, 416 U.S. 1 (1974) 23, 24

Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) 7, 18, 23

Zuch v. Hussey, 366 F.Supp. 553 (E.D. Mich. 1973) and 394 F.Supp. 1028 (E.D. Mich. 1975) 14

Constitution and Statutes

United States Constitution, Amendment XIV 4, 10, 12, 14, 15, 16

Civil Rights Act of 1866, 42 U.S.C. § 1982 14

Fair Housing Act of 1968, 42 U.S.C. §§3601, *et seq*. 14

Textual Material

Kushner & Werner, *Metropolitan Desegregation After* Milliken v. Bradley: *The Case For Land Use Litigation Strategies*, 24 **Catholic Univ. L.Rev.** 187 (1975) 11

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, et al., *Respondents,*

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, et al., *Petitioners,*

NORTHWEST OPPORTUNITY CENTER and ELUTERIA D. MALDONADO, *Intervening Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS AS *AMICUS CURIAE*

INTEREST OF *AMICUS CURIAE*

This *Amicus Curiae* brief is respectfully submitted by the American Society of Planning Officials by leave of court pursuant to Rule 42(3) of the Supreme Court of the United States.

The American Society of Planning Officials (ASPO) is a national, nonprofit membership association devoted to the development and effective application of the best techniques for managing the development of cities, regions, states and the nation. ASPO brings together the professional

planner and citizen member of local boards and commissions from urban, suburban and rural areas; the elected official and community groups; the developer and development regulator; the practitioner, student and academician. Founded in 1934, ASPO presently has more than 13,000 members.

As a service organization ASPO facilitates communication among all groups in planning. It serves as the national clearing house for planning information and identifies and analyzes important trends in the planning field. Through contract research and membership service programs, ASPO provides the professional planner, government agency, and other interested persons with current information on planning and advice on emerging developments in the field.

ASPO believes that a comprehensive plan, formally prepared and adopted, is an essential tool of local self-governance. Making such a plan to guide the development of a community is a peculiarly local responsibility and prerogative. The standards to be set, the conflicts to be reconciled, the special character to be sought, the values to be preserved, the priorities to be pursued, the sacrifices to be made, the goals that justify them—all of these choices must be left to the free exercise of a community's discretion. When that discretion denies equal protection of the laws to racial minorities there should be a burden upon a community to defend that discretion.

SUMMARY OF THE ARGUMENT

Racial discrimination issues that are likely to come before the Court will not involve open discrimination that is unconstitutional on its face. Such

explicit acts, in the land-use field, have been definitively excluded by this court. *Buchanan v. Warley*, 245 U.S. 60 (1917).

The more difficult issues that now are brought to the court entail complex and interwoven motivations. The same act may be well-designed to achieve legitimate, necessary ends of the general welfare and yet have other effects that are injurious to racial minorities and deny equal protection of the laws.

In local decisions involving land-use, it is the *ad hoc* determination, with a rationale drafted to fit the circumstances of each case, that is likeliest to smuggle freight injurious to civil rights laws or to equal protection. Rejections of private efforts to alleviate segregated housing situations have had such injurious effects. The community's comprehensive plan is a vehicle available to prevent such smuggling if the plan is itself prepared with care, with due participation of citizens, set forth in explicit terms, and formally adopted.

In the process of judicial review, it is the presumption of validity of an ordinance that is likeliest to see a similar admixture of denials of civil rights or equal protection with rational and legitimate objectives. The compelling interest test provides the appropriate means to prevent abuse without improper substitution of the court's judgment for local legislative determinations.

A community may, in its comprehensive plan, establish that it has a rational basis for its ordinances not in conflict with constitutional or statutorily protected rights. The burden is on a complainant to prove otherwise. If, however, a complainant demonstrates that the clear effect of an ordinance is violative of constitutionally or statutorily protected civil rights, compelling interest

provides a rigorous test, protective of the interests of both parties, as a basis of review. A community's comprehensive plan, properly-drawn, will assist it in meeting the burden of demonstrating its compelling interests. Application of the compelling interest test should by no means result in an over-riding of all local regulation.

ARGUMENT

I.

THE FAILURE OF THE VILLAGE TO GRANT THE REZONING REQUESTED BY THE RESPONDENT MUST BE EXAMINED IN TERMS OF ITS EFFECT UPON RACIAL MINORITIES, NOT IN TERMS OF ITS PURPOSE OR INTENT

In examining challenges to governmental land use regulatory actions as racially discriminatory in violation of equal protection of the laws under the Fourteenth Amendment, the touchstone of judicial inquiry is effect, not motive. Most actions appear neutral on the surface and involve a complex of diverse motivations within the minds of each separate decision maker. Legislators and local officials have traditionally been free from juridic inquests plumbing their individual thought processes followed in reaching particular decisions, and courts have sought to avoid making such inquiries. *See City of Fairfield v. Superior Court of Salano County*, 14 Cal.3d 768, 537 P.2d 375 (1975).

This Court discussed the problems inherent in seeking out explicit racial motivation in its review of a municipality's decision to discontinue operation of several municipally owned or leased swimming pools in face of a desegregation order in *Palmer v.*

Thompson, 403 U.S. 217 (1971). After reviewing the prior decision of *United States v. O'Brien*, 391 U.S. 367 (1968), the Court observed:

> That opinion explained well the hazards of declaring a law unconstitutional because of the motivation of its sponsors. First, it is extremely difficult for the court to ascertain the motivation, or collection of different motivations, that lie behind a legislative enactment. . . . It is difficult or impossible for any court to determine the "sole" or "dominant" motivation behind the choices of a group of legislators. Furthermore, there is an element of futility in a judicial attempt to invalidate a law because of the bad motives of its supporters. If the law is struck down for this reason, rather than because of its facial content or effect, it would presumably be valid as soon as the legislature or relevant governing body repassed if for different reasons. (403 U.S. at 224-225.)

The Court emphasized that its prior equal protection analysis focused upon actual effect, not motivation. *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218 (1964), and *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

Circuit courts addressing racial discrimination and the question of purpose or intent have also concluded that racial effect is the more workable standard. In one of the early equal protection challenges to a local redevelopment program, *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F.2d 920 (2nd Cir. 1968), the court stated:

> But the fact that the discrimination is not inherent in the administration of the program, but is, in the words of the District Court, "accidental to the

plan," surely does not excuse the planners from making sure that there is available relocation housing for all displaces. "Equal protection of the laws" means more than merely the absense of governmental action designed to discriminate; as Judge J. Skelly Wright has said, "we now firmly recognize that the arbitrary quality of thoughtlessness can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme." *Hobson v. Hansen,* 269 F.Supp. 401, 497 (D.D.C. 1967). (395 F.Supp. at 931.)

The complexity of the local land use control and planning process also makes concern with only motivation or intent in an equal protection challenge difficult. Many policies pursued by local governmental bodies are touted as in the best interest of the local community or argued to have been pursued in good faith. However, "[i]t is of no consolation to an individual denied the equal protection of the laws that it was done in good faith." *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 725 (1961). Municipal policies pursued in the name of otherwise established goals, however, often have an adverse effect upon racial minorities. Local property tax structures encourage zoning for what are felt, though often not supported in fact, to be low service-demanding, high tax ratables. This often results in antisocial consequences and misuse of the police power for only a privileged segment of society. Again, it is necessary to look to the effect of the local action on racial minorities, not simply the motivation.

Comprehensive planning is a process of determining the desired community character and goals carried on by the village in this case and most local

governments in this country. As a process, it entails the assessment of current conditions, resources and needs of the community, and an identification and choice of future goals. Given the disparate nature of communities, this is a highly open ended process that speaks in term of policies and objectives designed to guide subsequent decision making. Competing needs for scarce resources, housing, employment, and social services are addressed through this carefully thought out and reasoned endeavor.

Comprehensive planning is also a highly localized process with each community seeking to identify the factors which it desires to protect or perpetuate to ensure that those characteristics which make it a community are achieved or preserved. The goals and purposes of the community are ensured or obtained through various implementing techniques. This implementation of the comprehensive plan involves the public influencing or control of private activity, as well as certain public investments designed to accomplish the plan's goals. On the public fisc side, this may include investments in capital improvements such as highways and utility lines designed to encourage development of residential, commercial or industrial facilities. As to regulatory implementation, direct control of private activity through zoning restrictions remains the most common of all implementation techniques.

In this Court's opinion upholding zoning as a valid exercise of the police power, the well reasoned and comprehensive studies supporting that zoning were emphasized. *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365, 394 (1926). Local zoning based on a well reasoned and fair process must still meet, *inter alia,* constitutional requirements of due process

and equal protection. It is the requirement of equal protection and the extent of justification required for a local zoning decision that is at issue in this case.

While based on a fair and well reasoned process, zoning is a continually changing activity. A landowner desiring to develop a specific parcel of property must often seek development permission individually tailored to that property and the specific development proposal. Permission to develop may entail request for a specific rezoning of the property in question to the proper use classification or density limitation, or a special use permit may be necessary. A project must also often receive site plan review approval as to the design of the development, and ultimately, a building permit and utility hook-up permission. All of these stages of permission entail negotiation and exercise of discretion by the governmental body involved. They remain subject, however, to constitutional requirements of due process and equal protection. Particular property or classes of people may not be discriminated against, procedures must be open and fair, and restrictions must not arbitrarily deny all development value of a parcel of land.

Because of this complex nature of the local land use decision making process, decisions claimed to have a racially discriminatory effect arise in many contexts. The decision challenged may involve an attempt to rezone a parcel of property so as to keep out a project designed for low income and minority residents, or refusal of an application for necessary zoning to allow development of such a project. In *Dailey v. City of Lawton,* 425 F.2d 1037 (10th Cir. 1970), for example, a private nonprofit housing developer challenged the municipal refusal to rezone a parcel of land for multiple-family dwellings on the

ground of racial discrimination. The court found that the refusal to rezone was racially discriminatory and unlawful, without a showing of "racial intent" on the part of the public officials. Similarly, in *Sisters of Providence of St. Mary of the Woods v. City of Evanston,* 335 F.Supp. 396 (N.D. Ill. 1971), the court refused to dismiss a challenge to the city's refusal to rezone a parcel of property to a higher density. The court observed that the city could not "refuse to rezone for black projects where under the same circumstances it would have granted a variance to an all-white project." (335 F.Supp. at 404.)

Many other devices of local land use regulation may, as applied, effectuate a discriminatory and segregated housing pattern. These include, in addition to zoning, refusals of building permits, connections to public water systems, and connections to sewer systems. In *Kennedy Park Homes Association v. City of Lackawanna,* 436 F.2d 108 (2nd Cir. 1970), and *Crow v. Brown,* 457 F.2d 788 (5th Cir. 1972), refusals of necessary permits were found to be invalid because of racially discriminatory effect. And again, more recently, in *United Farm Workers of Florida Housing Project, Inc. v. City of Del Ray Beach,* 493 F.2d 799 (5th Cir. 1974), refusal of water and sewer permits was found to have a racially discriminatory effect, particularly in light of evidence that other developments had been extended services. The effect of the city's action was to reinforce the existing segregated housing pattern in the city and to frustrate efforts to construct housing that would be inhabited by a large proportion of low-income minority families. The circuit court held:

> Once the existence of a racially discriminatory effect is thus proven, the City must bear the heavy burden of demonstrating that its refusal

and resulting discrimination, were necessary to promote a compelling governmental interest. (493 F.2d at 809.)

The entire panoply of public services provided by municipal governments has also been challenged on the basis of racial discrimination. In *Hawkins v. Town of Shaw,* 461 F.2d 1171 (5th Cir. *en banc* 1972), the court examined the challenge to the town's allegedly discriminatory policies of providing public services in terms of racial effect. The *en banc* court reaffirmed the decision of the original panel of the court, 437 F.2d 1286 (5th Cir. 1971), to the effect that a denial of equal protection of the laws had been established.

II.

A REZONING DENIAL WHICH SERVES TO PERPETUATE A RACIALLY SEGREGATED HOUSING PATTERN IN FACE OF PRIVATE EFFORTS TO ALLEVIATE THAT PATTERN HAS A RACIALLY DISCRIMINATORY EFFECT UNDER EQUAL PROTECTION OF THE LAWS OF THE FOURTEENTH AMENDMENT

Adverse racial effect is established where a housing project, which would provide housing for a larger than usual minority population, is rejected by a community that is highly segregated. Under the Equal Protection Clause of the Fourteenth Amendment the burden then shifts to the municipality to justify its actions by some compelling governmental purpose. This Court's opinion in *Palmer v. Thompson,* 403 U.S. 217 (1971), does not hold to the contrary as some decisions have interpreted it. In a

case similar to the one at bar, the Sixth Circuit cited *Palmer* for the proposition that a neutral policy with greater impact on a minority group is not invalid. *Skilken & Co. v. Toledo,* Nos. 74-2116 and 74-2320 (6th Cir. filed December 10, 1975). *Accord Mahaley v. Cuyahoga Metropolitan Housing Authority,* 500 F.2d 1087, 1093 (6th Cir. 1974). This is not what this Court stated in *Palmer.* It simply held that there was no evidence in that case to show that the city had affected blacks differently from anyone else in closing down its municipal swimming pools. The Court reiterated that it will continue to look to racial effect in equal protection challenges. *See* Kushner & Werner, *Metropolitan Desegregation After* Milliken v. Bradley: *The Case For Land Use Litigation Strategies,* 24 **Catholic Univ. L. Rev.** 187, 212 (1975).

This analysis is similar to that carried on under other laws prohibiting activities that discriminate against racial minorities. In the area of employment, this Court has invalidated even private practices that, while racially neutral on the surface, disproportionately affect minorities. In *Griggs v. Duke Power Co.,* 401 U.S. 424 (1971) it was stated that "good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as "built-in headwinds' for minority groups and are unrelated to measuring job capability." (401 U.S. at 432). See *McDonnell Douglas Corp. v. Green,* 411 U.S. 792 (1973); *Gaston County v. U.S.,* 395 U.S. 285 (1969) (voting restrictions); *U.S. v. Real Estate Development Corp.,* 347 F.Supp. 766 (N.D. Miss. 1972) (public housing); and *Keyes v. School District No. 1, Denver, Colorado,* 413 U.S. 189, 217 (1973) (public schools) (Powell, J., concurring in part, dissenting in part).

In the case at bar, the private developer had sought

a change in zoning to permit development of a planned multi-family residential project. This project would have been occupied by a large percentage of minority familiies and would have appreciably reduced racial segregation in the community. However, the village refused to grant the necessary rezoning, thereby preventing significant integration of the community which would have obtained through the respondents' private housing development. This represents state action significantly and adversely affecting racial minorities. The village's decision so affects the private market that the segregated character of the community would continue intact. The only workable measure of the community's action is effect. There is no meaningful way to distinguish *de facto* as opposed to *de jure* action within the confines of equal protection of the laws. *Keyes v. School District No. 1, Denver, Colorado,* 413 U.S. 189, 217 (1973) (Powell, J., concurring in part and dissenting in part). This also gives an official imprimature to the existing housing segregation. For state or community action to so affect private housing specifically designed to help alleviate a segregated condition, its reasons must be compelling or its actions will be held invalid under the Equal Protection Clause of the Fourteenth Amendment.

This does not mean that the village has an affirmative obligation to provide housing for anyone, or to solve the racial segregation problems of the entire Chicago metropolitan region. The respondents seek only to build a private housing project without imposing any burdens upon the village. The Second Circuit has noted the difference between imposing burdens and removing barriers in several cases involving subsidized housing projects. That court

has refused to impose an affirmative duty upon a local government to construct housing or to affirmatively seek out subsidized housing. *Acevedo v. Nassau County,* 500 F.2d 1078 (2nd Cir. 1974), and *Citizens Committee for Faraday Wood v. Lindsay,* 507 F.2d 1065 (2nd Cir. 1974). However, the court also reaffirmed its holding in *Kennedy Park Homes Association v. City of Lackawanna,* 436 F.2d 108 (2nd Cir. 1970), that governmental barriers to private efforts to provide integrated housing in a highly segregated market would be closely scrutinized. Speaking of the *Lackawanna* case, the Second Circuit held in *Faraday Wood:*

> Against this background [a clearly segregated city] we held that the city could not, absent a compelling interest, thwart the efforts of a private organization to build housing for low-income families in the white area of the city by, among other things, refusing to accede to a reasonable rezoning request. (507 F.2d at 1069.)

This element of imposing additional financial burdens upon a community absent a duty to provide housing or other services has also been noted in the opinions of this Court. *James v. Valtierra,* 402 U.S. 137 (1971) and *Palmer v. Thompson,* 403 U.S. 217 (1971). This factor further distinguishes those decisions from the case at bar. The respondents herein make no such demand of the village. In fact, there was evidence that their development would make a net contribution to the public fisc.

The Village of Arlington Heights is clearly a segregated community. Furthermore, it lies within a larger area that has also been found to be segregated. *Clark v. Universal Builders,* 501 F.2d 324 (7th Cir. 1974). The circuit court in the case at bar found that out of

the village's 64,884 residents in 1970, only twenty-seven were black. The respondents' development would significantly alleviate the segregated housing situation. To deny them the right to go ahead with their project in light of the segregated character of the community has discriminatory racial effects. The denial of the rezoning for this project must be strictly scrutinized and justified by some compelling governmental interest. To do less would be a violation of equal protection of the laws as to the respondents herein.

III.

A REZONING DENIAL WHICH SERVES TO PERPETUATE A RACIALLY SEGREGATED HOUSING PATTERN IN FACE OF PRIVATE EFFORTS TO ALLEVIATE THAT PATTERN HAS A RACIALLY DISCRIMINATORY EFFECT UNDER THE 1866 CIVIL RIGHTS ACT AND THE 1968 FAIR HOUSING ACT

Fair and open housing is clearly the law and policy of the United States. This policy is effectuated, *inter alia*, by the 1866 Civil Rights Act, 42 U.S.C. § 1982 and the 1968 Fair Housing Act, 42 U.S.C. §§ 3601 *et. seq.* As with challenges under the Equal Protection Clause of the Fourteenth Amendment, the determination of violation of these acts is concerned with effect and not intent. The Fair Housing Act is aimed at "all practices which have a racially discouraging effect." *Zuch v. Hussey*, 366 F.Supp. 553 (E.D. Mich. 1973). This court has given a broad interpretation to the Civil Rights Acts also. See *Jones v. Alfred H. Meyer Co.*, 392 U.S. 409 (1968) and *Trafficante v. Metropolitan Life Insurance Co.*, 409 U.S. 205 (1972).

Denial of development permission for a project which would alleviate existing racial segregation has

a racially discriminatory effect in violation of the fair housing laws and civil rights acts. Activities subject to review under these laws must be justified by a compelling governmental interest or they will be invalidated. *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974); *Kennedy Park Homes Association v. City of Lackawanna*, 436 F.2d 108 (2nd Cir. 1970).

IV.

LOCAL ZONING ACTION WHICH HAS DISCRIMINATORY RACIAL EFFECTS UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT, THE 1866 CIVIL RIGHTS ACT, OR THE 1968 FAIR HOUSING ACT MUST BE JUSTIFIED BY SOME COMPELLING GOVERNMENTAL INTEREST

Action which has the effect of discriminating on the basis of race is subject to strict scrutiny and must be supported by a compelling governmental interest, or it is invalid under the Equal Protection Clause of the Fourteenth Amendment or fair housing and civil rights laws. *Loving v. Virginia*, 388 U.S. 1 (1967); *McLaughlin v. Florida*, 379 U.S. 184 (1964); *Shapiro v. Thompson*, 394 U.S. 618 (1969). The village's denial of the rezoning request, when it has this effect, removes the presumption of validity of its action. The burden is then upon the village to establish the compelling interest sought to be protected by refusing that request. *Dunn v. Blumstein*, 405 U.S. 330 (1972); *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974).

In *United States v. City of Black Jack*, 508 F.2d 1179 (8th Cir. 1974), the court enjoined enforcement of an ordinance preventing construction of apartments because of the ordinance's discriminatory

effects. The court held:

> Once the plaintiff has established a prima facie case by demonstrating racially discriminatory effect, the burden shifts to the governmental defendant to demonstrate that its conduct was necessary to promote a compelling governmental interest. (508 F.2d at 1185.)

The court observed that the compelling interest test would be properly applied whether the challenge was based upon the Fourteenth Amendment or upon the federal fair housing laws. (508 F.2d at 1185, n. 4.) The court continued:

> In determining whether any of these [asserted interests] rise to the level of a compelling governmental interest, we must examine: first, whether the ordinance in fact furthers the governmental interest asserted; second, whether the public interest served by the ordinance is constitutionally permissible and is substantial enough to outweigh the private detriment caused by it; and third, whether less drastic means are available whereby the stated governmental interests may be attained. (508 F.2d at 1187.)

The *Black Jack* court went on to find that the city's claimed interests in traffic control, overcrowded schools, and adjacent property values failed to meet even the first element of the compelling interest test. Concerning alleged devaluation of adjoining single-family homes, the court indicated that a metropolitan area planning study of apartment developments had concluded that such developments did not adversely affect single-family property values.

The justifications argued to be compelling in the case at bar were maintaining the integrity of the

zoning plan's buffer policy and protecting neighboring property values. The circuit court concluded that neither of these interests were sufficiently compelling to justify the racially discriminatory effect of the village's denial of the rezoning request.

V.

THE INTERESTS PUT FORTH BY THE VILLAGE HEREIN WERE NOT SUFFICIENTLY COMPELLING TO JUSTIFY THE DENIAL OF THE REZONING TO THE RESPONDENTS

The village argues that the rezoning request was denied in order to protect the integrity of the zoning plan and the community's master plan. It argues that property owners in the area had and continue to rely upon the single-family nature of zoning in the area, and the policy that multiple dwellings would only be used as buffers to more intensive uses. *Amicus* suggest that, however viewed, these reasons do not satisfy the compelling interest requirement.

Property owners in the village have no right to expect that zoning will continue unchanged forever as to any particular parcel of property. This is particularly true where the land is previously undeveloped as the property involved here was. Low density single-family residential zoning is often used as a holding zone until a landowner's plans become more definite. Zoning is not a static process, and change is a natural and expected part of the system. As one court had occasion to observe after reviewing a number of zoning cases:

> An examination of the multitude of zoning cases that have reached this court leads us to the con-

> clusion that the common practice of zoning agencies, after the adoption of an original ordinance, is simply to wait until some property owner finds an opportunity to acquire a financial advantage by devoting his property to a use other than that for which it is zoned, and then struggle with the question of whether some excuse can be found for complying with his request for a rezoning. (*Fritts v. City of Ashland,* 348 S.W.2d 712, 714 (Ky. 1961).)

The integrity of a system which is based on continual change and refinement does not require denial of every change. As the court quoted above went on to say, "planning" not excuses is the foundation for zoning. The necessity of a well reasoned and thought out plan as the basis of comprehensive zoning was one of the pole stars of this Court's decision to uphold police power zoning in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 394 (1926).

Comprehensive zoning is traditionally given a presumption of validity which must be overcome in most cases by the challenger. Petitioners in the case at bar point this out and emphasize the refusal by the judiciary to substitute its judgment for that of a zoning body or to sit as super zoning boards. Though some distinction may be made as to piecemeal changes in zoning, *Amicus* agrees that for the most part petitioners have set out a proper picture of the *usual* zoning review situation. However, this is not an usual zoning case. The element of racial effect in the village's rejection of respondents' rezoning request removes this case from that category. This case must be subjected to strict scrutiny by the Court to ensure that the reasons behind the village's action are legitimate and compelling, and determine if there are less drastic means of achieving these ends.

The village asserted that its policy of using multi-family developments as buffers to more intensive uses was part of the planning basis of its rejection of this zoning application. However, there was evidence that the buffer plan had not been applied consistently. While the court found that there had been no purposeful discrimination in the application of the buffer policy, the questionable consistency weakened the policy as a compelling interest to be protected. If compelling, why not in every instance? Furthermore, there was evidence showing that the nature of the project proposed herein was not a high density or large apartment building as encompassed within the meaning of the buffer policy. The townhouse development proposed in this case was more in character with the single-family dwellings in the area than a typical apartment complex or highrise contemplated by the requested zoning district and the buffer policy. Two dissenting members of the plan commission had pointed out that in terms of density, architecture, and most other characteristics, the clusters of two-story townhouses were more in keeping with the single-family zoning district than the multiple-family zone.

However artificial the zones or districts may have been, the respondents' development came only within the definition of multiple-family dwellings as permitted in the requested R-5 zone. In order to build their project, the respondents had to obtain the appropriate classification. Lines drawn to distinguish types of residential dwelling must admittedly be put somewhere. But the distinctions between the residences contemplated by this project and adjacent residences here are not compelling.

The buffer policy fails to meet the first element of the compelling interest test, that it "in fact furthers the governmental interest asserted." The townhouse

project proposed in the case at bar was not of the typical apartment nature sought to be used as a buffer, and had more in common with the adjacent single-family dwellings. This proposal would not so seriously disrupt the character of the area as to destroy the integrity of the comprehensive zoning plan for the area. With a development proposal so similar to the adjacent single-family development, there were certainly other less drastic means to ensure that any alleged adverse impact on the adjacent single-family area might be lessened. Proper design assurances, layout and clustering of the townhouses, and creative arrangement of open space areas and access facilities have all been useful in this regard. As the development was proposed here, more than sixty per cent of the site would be maintained as open space.

The second interest put forth by the village as compelling was that neighboring property values might be diminished. Though the circuit court questioned whether such considerations would ever be a compelling interest, it held that the facts in this case could not support such an interest even if compelling. While a dramatic or total destruction in property values might be a compelling interest, certainly only a speculative five or ten per cent decrease at most, as suggested by the village's own expert, is not. Furthermore, the protection of property values due to reliance on the existing zoning is not compelling where the property owners could not expect the undeveloped land to stay the same forever, and had no right to see the land used only in a manner exactly like theirs. The property in question had been maintained as open space by a private institution no longer wishing to do so. Also, the nature of the development proposed here is so similar to the single-family dwellings already in

existence that adverse impact is difficult to perceive. The design and layout of the project can ensure that any adverse impact that might allegedly occur will be minimized.

To the extent the fear of decreased property values is due to antagonism towards the development because of its potential racially integrated character, this simply cannot create a property value to be protected. To hold otherwise would be to say that first, a racially segregated, all-white residential community was more desirable and could justifiably command a premium price for residency therein. And second, it would mean that this "premium" was a right justifying racial discrimination and perpetuation of segregated housing.

The petitioners' suggest in their brief that application of the compelling interest test to local land use decisions involving applications to build low-income multiple-family dwellings will result in the destruction of all single-family zoning districts. (Petitioners' Brief at 16.) This logic simply is unfounded and will not result from the Court's affirmance of the circuit court opinion in this case. Comprehensive community planning and local land use regulations designed to establish distinct residential districts may still be established and defended. The Sixth Circuit has spoken to the issue of whether application of the compelling interest test would destroy all local zoning. *Skilken & Co. v. Toledo,* Nos. 74-2116 and 74-2320 (6th Cir. filed December 10, 1975). To the extent this decision concludes that application of the compelling interest means destruction of local zoning, *Amicus* suggests it is incorrect. However, such a position is not entirely clear from the opinion. The court notes that the city could have satisfied the compelling interest test if necessary. (Slip opinion at 20, n. 4.) Furthermore, much of the court's concern

with the future vitality of local zoning controls was due to its dissatisfaction with the remedy fashioned by the district court—preparation of a disegregation plan by the city. A remedy the court felt was unwarranted and beyond the power of the judiciary.

The case at bar is concerned with racial discrimination and private efforts to alleviate the problems of segregated housing patterns. Communities are not being asked to provide housing for anyone or to discard all existing regulations in deference to low-income integrated housing. A proposal to build upon a flood plain, in an area with unstable soil conditions, or where public facilities such as sewer and water were not yet available could be validly rejected under the compelling interest test. Many other conditions may also, in specific instances, meet the burdens of this test. But these concerns or interests must be supported by the evidence and not used to discriminate against racial minorities. See, *e.g., United Farm Workers of Florida Housing Project, Inc. v. City of Delray Beach,* 493 F.2d 799 (5th Cir. 1974); *Church of God of Louisiana v. Monroe-Ouachita Regional Planning Commission,* 404 F.Supp. 175 (W.D. La. 1975).

A development proposal that is in clear contradiction to an established and consistently followed policy of a community's comprehensive plan and land use restrictions may yet be rejected. Where policies are explicit and the grounds for application and non-application are set out, the compelling interests sought to be protected may be upheld. Communities that have become highly segregated must ensure that their decisions which reject private efforts to introduce integrated housing developments do not simply effectuate a continuation of that segregated pattern.

CONCLUSION

The use of zoning in this country was established on the legitimate desire of communities to determine future development for themselves as against the right of individuals to use private property without restrictions.

This Court approved local zoning controls in *Village of Euclid v. Ambler Realty Co.,* 272 U.S. 365 (1926). Two years later the Court again had occasion to scrutinize zoning powers and pull in the reins of a specific exercise of the "governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use." *Nectow v. City of Cambridge,* 277 U.S. 183, 188 (1928). This opinion indicated a willingness to supervise exercise of zoning powers as necessary to protect private rights.

This Court had the scope of power of local zoning authorities before it again quite recently in *Village of Belle Terre v. Boraas,* 416 U.S. 1 (1974) where it reaffirmed the expansive power of local zoning controls. However, the Court also evidenced a willingness to more closely scrutinize zoning actions that infringe upon fundamental rights or discriminate against racial minorities. It found no evidence in the record to indicate infringement of constitutionally protected rights by that community's definition of "family." This case presents the opportunity for the Court to examine modern zoning practices that infringe upon the rights of racial minorities seeking open housing opportunties offered by a private developer in an otherwise segregated housing market. Just as *Nectow* complimented and clarified the Court's original approval of zoning, so this case will present a clarification to *Belle Terre* in the application of the compelling interest test to

activities infringing on constitutionally protected rights.

The invocation of the compelling interest test and its application must be done with rigor to avoid displacing local legislative judgments with judicial judgments. For the community, its strongest evidence in meeting this burden of demonstrating a compelling interest remains it comprehensive plan, adopting policies for all to read and follow. Just as planning and forethought were important to this Court's original decision to uphold zoning, so the modern comprehensive planning process retains validity in meeting additional burdens when constitutionally protected rights are at stake. Courts need not impose any uniformity of standards or values on communities as long as constitutionally or statutorily protected rights are guarded. Within this context, communities remain free to lay out areas where the "blessings of quiet seclusion, and clean air make the area a sanctuary for people." *Village of Belle Terre v. Boraas,* 416 U.S. 1, 9 (1974).

Amicus respectfully submits that the decision of the U.S. Court of Appeals for the Seventh Circuit is correct, and, accordingly, should be affirmed.

Respectfully submitted,

Conrad N. Bagne, *Attorney for Amicus*
1313 E. 60th St.
Chicago, IL 60637
312-947-2071

Supreme Court, U. S.
FILED
MAR 18 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-616

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,
Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,
Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,
Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.

Gunthorp-Warren Printing Company, Chicago • Financial 6-6565

2

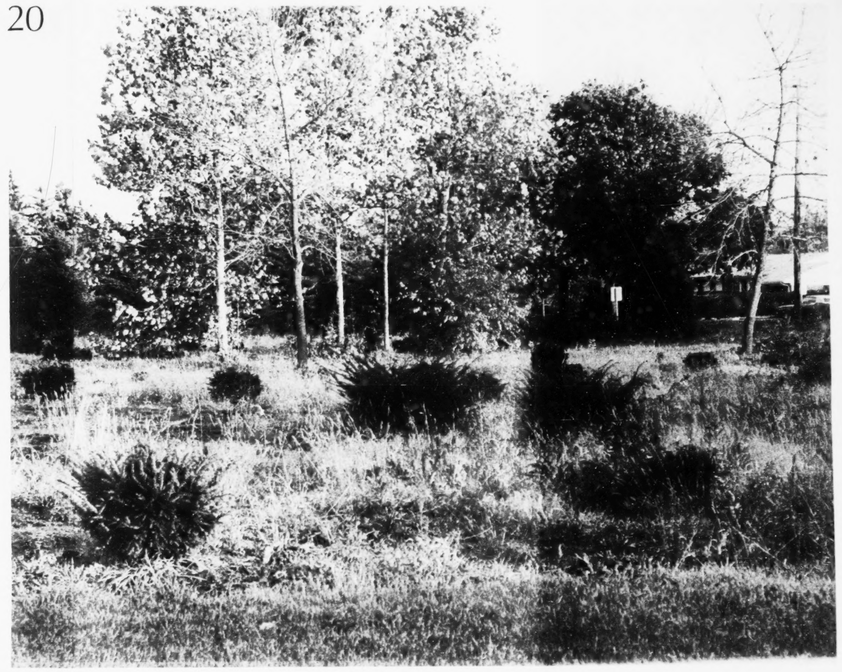
18

NORTH

19

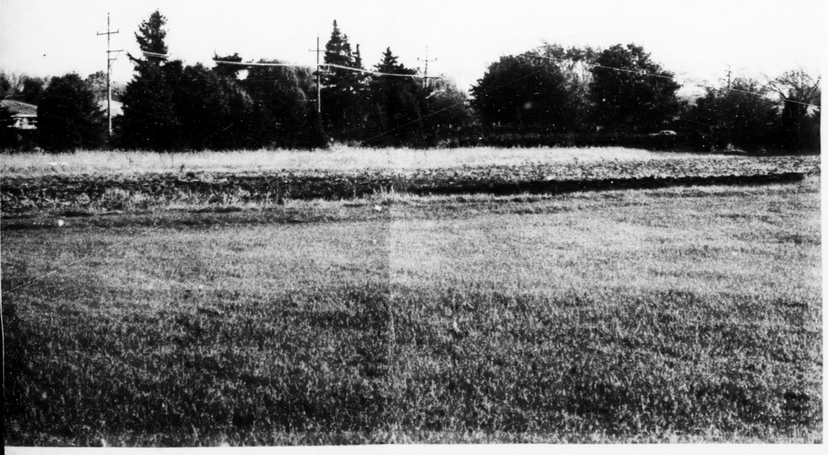
NORTH

20



SOUTHEAST

24



SOUTHEAST

25

SOUTH

26

EAST

APPENDIX F

F1

DEFENDANT'S EXHIBIT NO. 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975.

No. 75-616.

METROPOLITAN HOUSING DEVELOPMENT CORPORATION, ET AL.,

Respondents,

vs.

THE VILLAGE OF ARLINGTON HEIGHTS, ET AL.,

Petitioners,

NORTHWEST OPPORTUNITY CENTER AND ELUTERIA D. MALDONADO,

Intervening Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

OBJECTIONS TO MOTION OF THE AMERICAN SOCIETY OF PLANNING OFFICIALS FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE.

Now comes the Village of Arlington Heights, et al., petitioners herein, by Jack M. Siegel, their attorney, and, pusuant to Rule 42(3) of the United States Supreme Court, object to the motion of the American Society of Planning Officials for leave to file a brief as amicus curiae. In support of said objections, petitioners say as follows:

1. That the motion for leave to file a brief as amicus curiae fails to concisely state the nature of the applicant's interest in the issues in this case, but instead merely describes the status of the American Society of Planning Officials and contains general allegations not related to the specific nature of the case before this Court. That the applicant seeks to "proffer a balanced prospective of the issues presented by this case," but by the terms of its motion is wholly biased and in no way objective about the issues.

2. That said motion fails to set forth facts or questions of law that have not been adequately presented by the parties, or reasons for believing that any facts or questions of law will not be adequately presented by the parties. That, in fact, the respondents herein have filed a brief in excess of 50 pages which, together with the brief of the petitioners, fully sets forth all the facts and questions of law relative to this cause.

3. That the motion fails to set forth any facts showing that the membership of the American Society of Planning Officials has in fact consented or supported the filing of said motion and brief.

4. That the applicant has failed to participate in the trial below in the District Court for the Northern District of Illinois or in the cause on hearing in the Court of Appeals for the Seventh Circuit, and has evidenced no interest in this cause until its attempt to file a brief as amicus curiae.

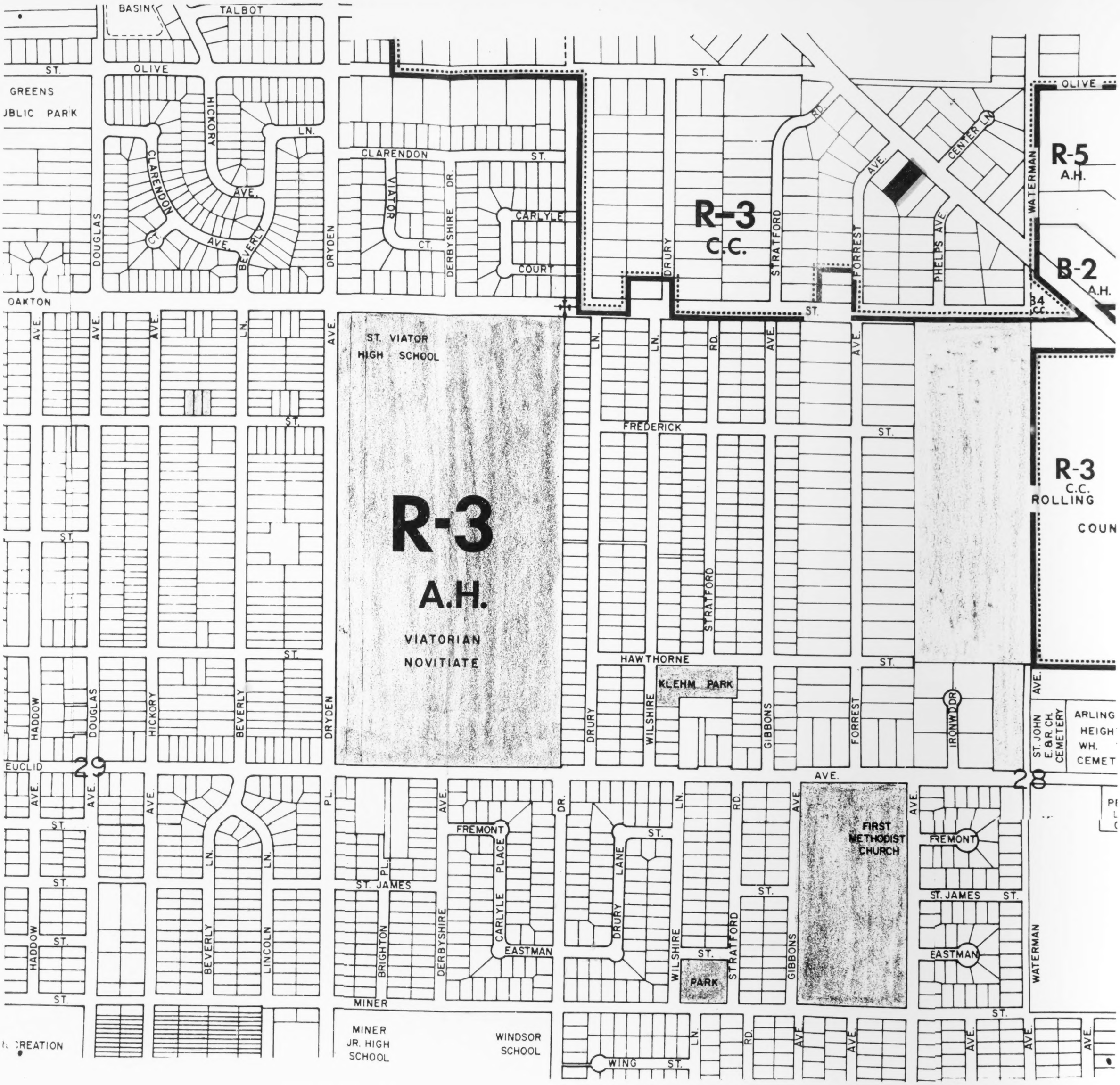
5. That the petitioners herein have withheld consent to the filing of a brief by the applicant for the reason that no necessity exists for the filing of said brief since all the questions of fact and law are and will be adequately presented to this Court by the original parties herein, and the additional burden of answering said brief would be a hardship on the petitioners, without any benefit to this Court. That the petitioners believe that the applicant has not thoroughly considered all the issues before it determined to file its brief, and never consulted the

petitioners in an effort to learn the point of view of the petitioners herein.

WHEREFORE, the petitioners respectfully object to the filing of said brief as amicus curiae and respectfully request that said motion be denied.

Respectfully submitted,

JACK M. SIEGEL,
39 South LaSalle Street,
Chicago, Illinois 60603,
312-263-2968,
Attorney for Petitioners.



SINGLE FAMILY

MULTI-FAMILY

BUSINESS

INSTITUTIONAL

SCHOOLS & PARKS

EXISTING LAND USE

EXISTING ZONING

APPENDIX E

E1

DEFENDANT'S EXHIBIT NO. 1

3

21

NORTHEAST

22

SOUTH

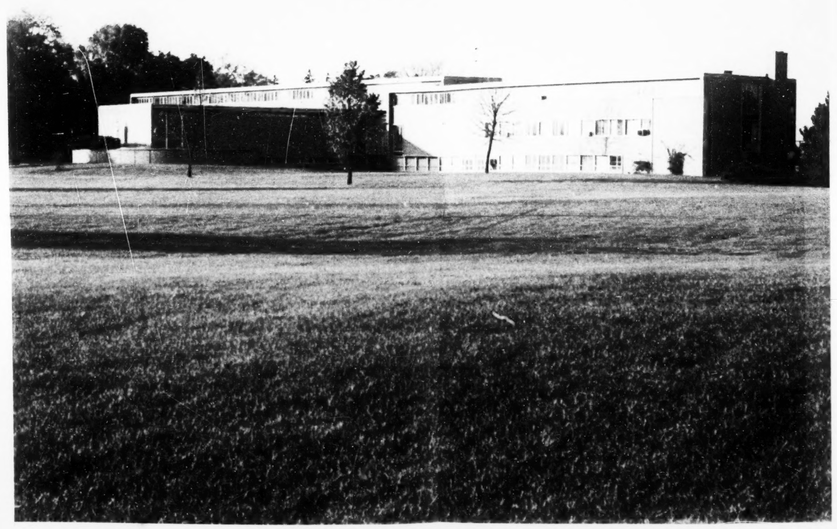
23

EAST

27

EAST

28



NORTHWEST

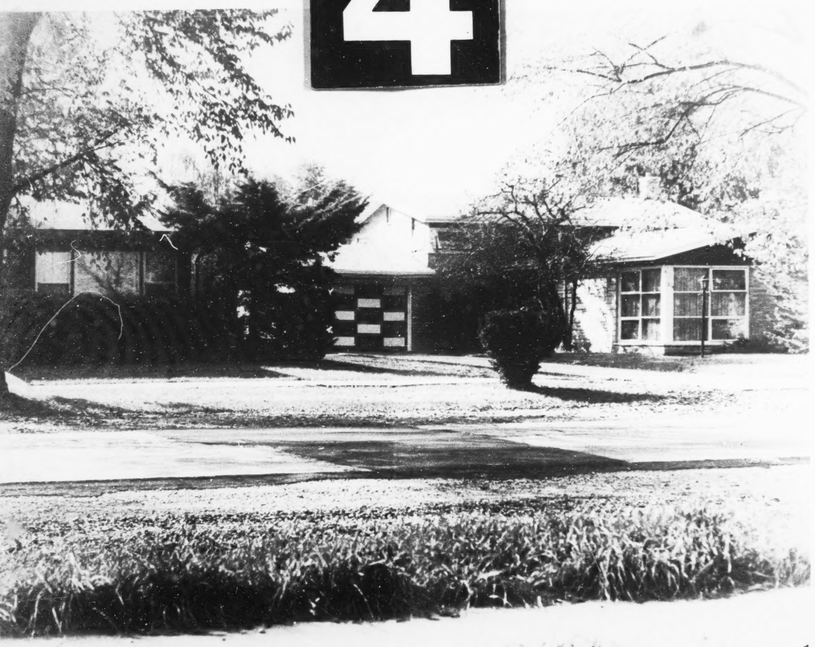
29

EAST

F2

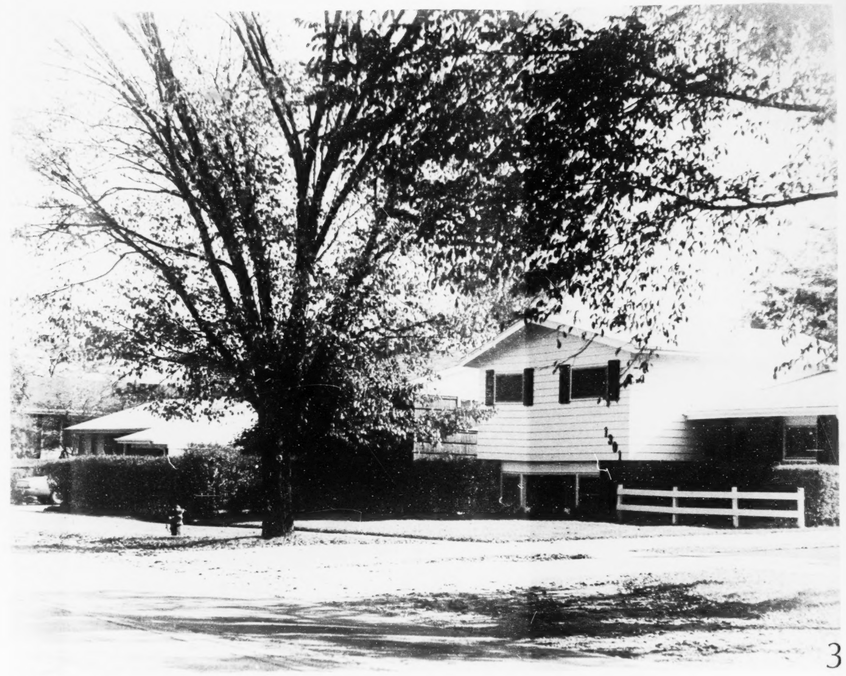
DEFENDANT'S EXHIBIT NO. 2

4

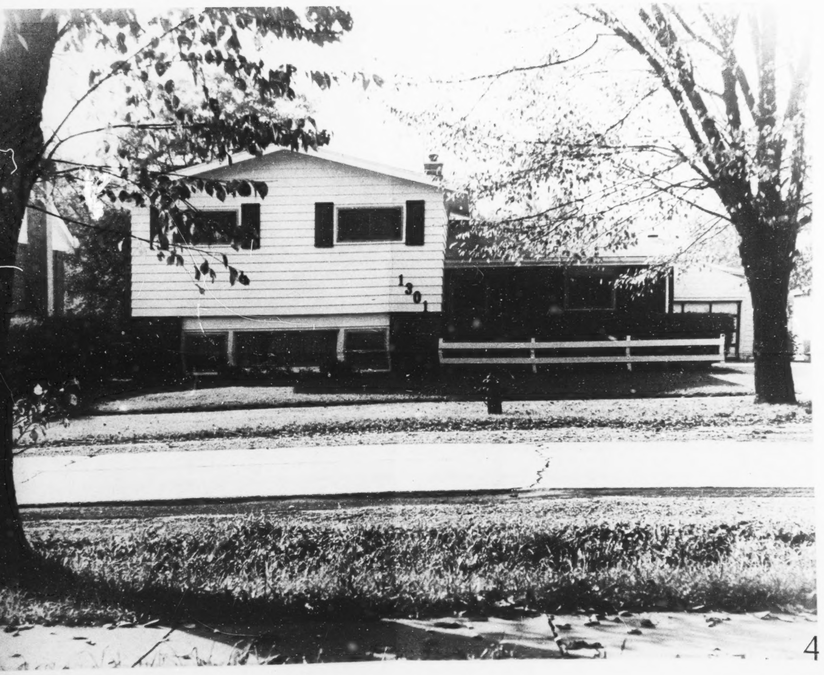


1

2



3



4

14

17

SOUTH SIDE OF EUCLID AVENUE

F3

DEFENDANT'S EXHIBIT NO. 14

5

5

6

7

8

9

10

F4

WEST SIDE OF DRURY LANE

DEFENDANT'S EXHIBIT NO. 14

6

11

12

13

WEST SIDE OF DRURY LANE

15

16

WEST SIDE OF DRYDEN AVENUE

F5

DEFENDANT'S EXHIBIT NO. 14